Fidelity Bank & Trust Company CITIZENS PLAZA · POST OFFICE BOX 33000 · LOUISVILLE, KENTUCKY 40232

July 30, 1979

RECORDATION NO. 686 Filed 1425

JUL 3 1 1979 - 1 15 AM

INTERSTATE COMMERCE COMMISSION

Secretary Interstate Commerce Commission Washington, D.C. 20423

Dear Sir:

9-212A010 JUL 31 1979

10686 Filed 1425

JUL 3 1 1979 - 1 15 AM

C. Howard Capito

Attached is the original and enclosed are two additional executed counterparts of (i) an Equipment Trust Agreement and (ii) an Amendment and Restatement of Lease (to which are attached as exhibits the prior lease, an executed copy of the current Sublease, an executed copy of the Guaranty of the Sublease and an executed copy of the Assignment of the Sublease), all dated as of July 27, 1979, and all relating to certain railroad rolling stock as listed below, made between the following parties:

Title.

Name And Address

Trust Party/Lessor: Oneida & Western Transportation

Company

300 Forrest Park Blvd.

Knoxville, Tennessee 37919

Trustee:

Citizens Fidelity Bank and

Trust Company P. O. Box 33000

Louisville, Kentucky 40232

Attn: Citizens Fidelity

Energy Co.

Lessee:

Shamrock Coal Company, Inc.,

P. O. Box 10388

Knoxville, Tennessee 37919

FEE OPERATION BR.

BL. HJ 60 1

0.0 Sublease Guarantor: Shamrock Resources Corporation

P. O. Box 10388

Knoxville, Tennessee 37919

BECEIVED

of B. Will

Secretary
Interstate Commerce Commission
July 30, 1979
Page #2

Equipment Covered by the above-referenced agreements:

- 1. One hundred and fifty four (154) 105 Ton Rotary Dump Bathtub Type Gondola Cars, manufactured by Whittaker Corporation, Berwick Forge and Fabricating Division, Berwick PA. with: (i) AAR Mechanical Designation GTS; (ii) AAR Car Type Code El00; Road Initials and Numbers OWTX99001 - OWTX99154 (all inclusive); (iii) Steel Stencil Numbers one through one hundred fifty four (1-154) (all inclusive); and (iv) the "TITLE TO THIS following legend: CAR IS VESTED IN CITIZENS FIDELITY BANK AND TRUST COMPANY, LOUISVILLE, KY., AS TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."
- 2. Railroad rolling stock to be acquired in the future by the Trustee and subjected at that time to the Equipment Trust Agreement and the Sublease.

I respectfully request that the orginal of these documents be recorded under the provisions of 49 U.S.C.A. §11303 (1979) (formerly §20c of the Interstate Commerce Act).

I would also appreciate your receipting one of the counterparts by both date stamp and letter and returning it, along with the original, to Citizens Fidelity Bank and Trust Company (Trustee) at the above address.

The undersigned certifies that he is an officer of the Trustee and that he has knowledge of the matters set forth in the enclosed Mortgage.

C: Howard Capito

Assistant Vice President

CHC/mfh Enclosures

AMENDMENT AND RESTATEMENT OF LEASENTERSTATE COMMERCE COMMISSION

THIS AMENDMENT AND RESTATEMENT OF LEASE, dated as of 1979, is made by and between ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership (hereinafter called the "Lessor") and SHAMROCK COAL COMPANY, INCORPORATED, a Tennessee corporation (hereinafter called the "Lessee").

WHEREAS, by instrument a copy of which is attached hereto as Exhibit "A" the parties did enter into a certain ("Lease") of railroad rolling stock; and

WHEREAS, title to said railroad rolling stock is intended to be transferred by the Lessor to Citizens Fidelity Bank and Trust Company as Trustee under a certain Equipment Trust Agreement, said Trustee to lease said equipment to the Lessor pursuant to a certain lease set forth in said Equipment Trust Agreement; and which railroad rolling stock is intended to be sublet to the Lessee pursuant to the Lease; and

WHEREAS, the parties hereto desire to amend and restate the Lease so that it shall be in its entirety in the form of the "Sublease" attached hereto as Exhibit "B";

NOW, THEREFORE, the parties hereto do hereby agree that the Lease shall hereafter be deemed amended and restated in its entirety to the form attached hereto as Exhibit "B". The parties also acknowledge that certain Assignment of Sublease and Guaranty attached hereto as Exhibit "C" and Guaranty of Sublease attached hereto as Exhibit "D".

IN WITNESS WHEREOF, the parties hereto have executed this instrument as of the day and year first above written.

ONEIDA & WESTERN TRANSPORTATION

COMPANY

mi+1a.

LEASE

THIS LEASE, made this 177 day of 107, 1979, by and between ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership, hereinafter called "Lessor," and SHAMROCK COAL COMPANY, INCORPORATED, a Tennessee corporation, hereinafter called "Lessee."

WITNESSETH:

- 1. Lease. Lessor hereby leases to Lessee, and Lessee hereby leases and hires from Lessor, all machinery, equipment and other property described in (a) the schedule executed by the parties concurrently herewith or hereafter and made a part hereof, and (b) any schedule or schedules hereafter executed by the parties hereto and made a part hereof. All said machinery, equipment and other property described in all said schedules is hereinafter collectively called "equipment;" and all said schedules are hereinafter collectively called "schedule."
- 2. <u>Term</u>. The term of this lease respecting each item of equipment commences upon whichever of the following dates is earlier:
- (a) the date Lessor becomes liable with respect to said item of equipment; or
- (b) the date said item of equipment is delivered to Lessee.

The term of this lease ends on the date designated in the schedule.

3. Rent. The rent for any and every item of equipment described in the schedule shall be the amount designated in the schedule. Lessee shall pay Lessor said rent in advance, in the amounts and at the times set forth in the schedule, at the office of Lessor, 2021 United American Plaza, Post Office Bos 550, Knoxville, Tennessee, 37901, Attention Mr. Lindsay Young, or to such other person and/or at such other place as Lessor may from time to time designate in writing.

- 4. <u>Use</u>. Lessee shall use the equipment in a careful and proper manner and shall comply with and conform to all national, state, municipal, police and other laws, ordinances and regulations in anywise relating to the possession, use or maintenance of the equipment. If at any time during the term hereof Lessor supplies Lessee with labels, plates or other markings, stating that the equipment is owned by Lessor, Lessee shall affix and keep the same upon a prominent place on the equipment.
- 5. Lessee's Inspection; Conclusive Presumptions.

 Lessee shall inspect the equipment within forty-eight (48) hours after receipt thereof. Unless Lessee within said period of time gives written notice to Lessor, specifying any defect in or other proper objection to the equipment, Lesse agrees that it shall be conclusively presumed, as between Le or and Lessee, that Lessee has fully inspected and acknowledged that the equipment is in good condition and repair, and that Lessee is satisfied with and has accepted the equipment in such good condition and repair.
- 6. Lessor's Inspection. Lessor shall at any and all times during business hours have the right to enter into and upon the premises where the equipment may be located for the purpose of inspecting the same or observing its use. Lessee shall give Lessor immediate notice of any attachment or other judicial process affecting any item of equipment and shall, whenever requested by Lessor advise Lessor of the exact location of the equipment.
- 7. Alterations. Without the prior written consent of Lessor, Lessee shall not make any alterations, additions or improvements to the equipment. Such permitted alterations, additions or improvements may, at Lessee's option, be removed by Lessee upon the expiration or earlier termination of this lease if and only if such removal may be accomplished without damage to the equipment or otherwise reducing its value below

that which it would have been in the event no such alterations, additions or improvements had been made.

- B. <u>Repairs</u>. Lessee, at its own cost and expense, shall keep the equipment in good repair, condition and working order and shall furnish any and all parts, mechanisms and devices required to keep the equipment in good mechanical and working order.
- 9. Loss and Damage; Stipulated Loss Value. Lessee hereby assumes and shall bear the entire risk of loss and damage to the equipment from any and every cause whatsoever. No loss or damage to the equipment or any part thereof shall impair any obligation of Lessee under this lease which shall continue in full force and effect.

In the event of loss or damage of any kind whatever to any item of equipment, Lessee shall:

- (a) Place the same in good repair, condition and working order, or replace the same with like equipment in good repair, condition and working order; or
- (b) If in the reasonable judgment of Lessor same is determined by Lessor to be lost, stolen, destroyed or damaged beyond repair, pay Lessor therefor in cash the "Stipulated Loss Value" as set forth in the schedule. Upon such payment this lease shall terminate with respect to such item of equipment so paid for and Lessee thereupon shall become entitled to such item of equipment as-is-where-is without warranty, express or implied, with respect to any matter whatsoever.
- 10. <u>Surrender</u>. Upon the expiration or earlier termination of this lease, with respect to any item of equipment,
 Lessee shall (unless Lessee has paid Lessor in cash the
 "Stipulated Loss Value" of such item of equipment pursuant to
 paragraph 9 hereof) return the same to Lessor in good repair,
 condition and working order, ordinary wear and tear resulting
 from proper use thereof alone excepted, in the following manner
 as may be specified by Lessor:

- (a) By delivering such item of equipment at
 Lessee's cost and expense to such place as Lessor shall specify
 within the State of Kentucky.
- 11. Insurance. Lessee shall keep the equipment insured against all risks of loss or damage by fire and such other risks as are covered by endorsement commonly known as supplemental or extended coverage for not less than the "Stipulated Loss Value" as set forth in the schedule; and shall carry public liability and property damage insurance covering the equipment in amounts of not less than \$_____ in respect of bodily injury or death to any one person, not less than \$_ in respect of any one accident, and not less than \$ in respect of property damage. All such insurance shall insure both Lessor and Lessee. The Lessee may effect such coverages under its blanket policies. All such policies shall be written by companies presently insuring the Lessee or other companies reasonably satisfactory to the Lessor and certificates showing such coverages to be in effect shall be furnished to the Lessor upon request. Each insurer shall agree, by endorsement upon the certificate or certificates issued by it or by independent instrument furnished to Lessor, that it will give Lessor thirty (30) days' written notice before the policy in question shall be altered or cancelled and that any proceeds shall be paid jointly to the Lessor and Lessee as their interests may appear. The proceeds of such insurance, at the option of Lessor, shall be applied (a) toward the replacement, restoration or repair of the equipment or (b) toward payment of the obligations of Lessee hereunder.
- 12. <u>Taxes</u>. Lessee shall keep the equipment free and clear of all levies, liens and encumbrances other than those being contested which as a result of such contest do not adversely threaten Lessor's title to the equipment and shall pay when due all license fees, registration fees, assessments, charges and taxes (municipal, state and federal) which may now

or hereafter be imposed upon the ownership, leasing, renting, sale, possession or use of the equipment, excluding, however, all taxes on or measured by Lessor's income.

- 13. Lessor's Payment. In case of failure of Lessee to procure or maintain said insurance or to pay said fees, assessments, charges and taxes, all as hereinbefore specified, Lessor shall have the right; but shall not be obligated, to effect such insurance, or pay said fees, assessments, charges and taxes, as the case may be. In that event, the cost thereof shall be repayable to Lessor with the next installment of rent, and failure to repay the same shall carry with it the same consequence, including interest at ten percent (10%) per annum, as failure to pay any installment of rent.
- 14. WARRANTIES. LESSOR MAKES NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE.
- 15. <u>Indemnity</u>. Lessee shall indemnify Lessor against, and hold Lessor harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including without limitation the manufacture, selection, delivery, possession, use, operation or return of the equipment. Each party agrees that it will give the other prompt notice of the assertion of any such claim or the institution of any such action, suit or proceeding.
- 16. <u>Default</u>. If Lessee with regard to any item or items of equipment fails to pay any rent or other amount herein provided within ten (10) days after the same is due and payable, or if Lessee with regard to any item or items of equipment fails to observe, keep or perform any other provision of this lease required to be observed, kept or performed by Lessee, and if Lessee fails to remedy, cure or remove such failure in payment or such other failure in observing, keeping or performing the provisions of this lease within ten (10) days

after receipt of written notice thereof from Lessor, Lessor shall have the right to exercise any one or more of the following remedies:

- (a) To declare the entire amount of rent hereunder immediately due and payable as to any or all items of equipment, without notice or demand to Lessee.
- (b) To sue for and recover all rents, and other payments, then accrued or thereafter accruing, with respect to any or all items of equipment.
- (c) To take possession of any or all items of equipment, without demand or notice, wherever same may be located, without any court order or other process of law.

 Lessee hereby waives any and all damages occasioned by such taking of possession unless caused by Lessor's gross negligence or willful misconduct. Any said taking of possession shall not constitute a termination of this lease as to any or all items of equipment unless Lessor expressly so notifies Lessee in writing.
- (d) To terminate this lease as to any or all items of equipment.
- (e) To pursue any other remedy at law or in equity.

Notwithstanding any said repossession, or any other action which Lessor may take, Lessee shall be and remain liable for the full performance of all obligations on the part of Lessee to be performed under this lease.

17. <u>Bankruptcy</u>. Neither this lease nor any interest therein is assignable or transferable by operation of law. If any proceeding under the Bankruptcy Act, as amended, is commenced by Lessee, or such an action is commenced against Lessee and is not dismissed within sixty (60) days after the commencement thereof, or if the Lessee is adjudged insolvent, or if the Lessee makes any assignment for the benefit of its creditors, or if a writ of attachment or execution is levied

on any item or items of the equipment and is not released or satisfied within ten (10) days thereafter, or if a receiver is appointed in any proceeding or action to which the Lessee is a party with authority to take possession or control of any item or items of equipment, Lessor shall have and may exercise any one or more of the remedies set forth in paragraph 16 hereof and this lease shall, at the option of Lessor on notice to Lessee, immediately terminate and shall not be treated as an asset of Lessee after the exercise of said option.

- 18. Concurrent Remedies. No right or remedy herein conferred upon or reserved to Lessor is exclusive of any other right or remedy herein or by law or equity provided or permitted; but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.
- 19. <u>Lessor's Expenses</u>. Lessee shall pay Lessor all costs and expenses, including reasonable attorneys' fees, incurred by Lessor in exercising any of its rights or remedies hereunder or enforcing any of the terms, conditions, or provisions hereof.
- 20. Assignment. Without the prior written consent of Lessor, Lessee shall not (a) assign, transfer, pledge or hypothecate this lease, the equipment or any part thereof, or any interest therein or (b) sublet or lend the equipment or any part thereof to be used by anyone other than Lessee or Lessee's employees. Consent to any of the foregoing prohibited acts applies only in the given instance and is not a consent to any subsequent like act by Lessee or any other person, provided, however, that without such prior written consent but with notice to Lessor, Lessee may assign this lease to any corporation into which Lessee may merge or consolidate or which may acquire all or substantially all of Lessee's assets, and may sublease any of

the equipment subject to this lease to any subsidiary of Lessee or to Lessee's parent or any subsidiary of Lessee's parent.

No such permitted sublease shall operate to relieve the Lessee of its obligations hereunder which shall remain those of a principal and not a guarantor.

Subject always to the foregoing, this lease inures to the benefit of, and is binding upon, the heirs, legatees, personal representatives, successors and assigns of the parties hereto.

- 21. Lessor's Assignment. It is understood that Lessor contemplates assigning this lease and/or mortgaging the equipment, and that said assignee may assign the same. All rights of Lessor hereunder may be assigned, pledged, mortgaged, transferred, or otherwise disposed of, either in whole or in part, without notice to Lessee. If Lessor assigns this lease or the rentals due or to become due hereunder or any other interest herein, whether as security for any of its indebtedness or otherwise, no breach or default by Lessor hereunder or pursuant to any other agreement between Lessor or Lessee, should there be one, shall excuse performance by Lessee of any provision hereof. No such assignee shall be obligated to perfor any duty, covenant or condition required to be performed by Lessor under the terms of this lease. Anything herein contained to the contrary, Lessor shall not have the right to, and agrees that it will not, include in any such assignment any of Lessor's rights against vendors, manufacturers or suppliers of any of the equipment.
- 22. Ownership. The equipment is, and shall at all times be and remain, the sole and exclusive property of Lessor; and the Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this lease.
- 23. <u>Personal Property</u>. The equipment is, and shall at all times be and remain, personal property.

- 24. <u>Interest</u>. Should Lessee fail to pay any part of the rent herein reserved or any other sum required by Lessee to be paid to Lessor, within ten (10) days after the due date hereof, Lessee shall pay unto the Lessor interest on such delinquent payment from the expiration of said ten (10) days until paid at the rate of ten percent (10%) per annum.
- 25. Offset. Lessee hereby waives any and all existing and future claims, and offsets, against any rent or other payment due hereunder and agrees to pay the rent and other amounts hereunder regardless of any offset or claim which may be asserted by Lessee or on its behalf.
- 26. Non Waiver. No covenant or condition of this least can be waived except by the written consent of Lessor. Forbearance or indulgence by Lessor in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Lessee to which the same may apply, and, until complete performance by Lessee of said covenant or condition, Lessor shall be entitled to invoke any remedy available to Lessor under this lease or by law or in equity despite said forbearance or indulgence.
- 27. Entire Agreement. This instrument constitutes the entire agreement between Lessor and Lessee; and it shall not be amended, altered or changed except by a written agreement signed by the parties hereto.
- 28. Notices. Service of all notices under this agreement shall be sufficient if given personally or mailed via registered mail to the party involved at its respective address hereinafter set forth, or at such address as such party may provide in writing from time to time. Any such notice mailed to such address shall be effective when deposited in the United States mail, duly addressed and with postage prepaid. Notices to Lessee shall also be sent to Lessee at the address at which the equipment covered by the first schedule hereto is located.

- 29. <u>Gender: Number</u>. Whenever the context of this lease requires, the masculine gender includes the feminine or neuter, and the singular number includes the plural; and whenever the word "Lessor" is used herein, it shall include all assignees of Lessor. If there is more than one lessee named in this lease, the liability of each shall be joint and several.
- $30. \ \underline{\text{Titles}}.$ The titles to the paragraphs of this lease are solely for the convenience of the parties, and are not an aid in the interpretation of the instrument.
- 31. $\underline{\text{Time}}$. Time is of the essence to this lease and each and all of its provisions.
- 32. <u>Lessor's Consent</u>. Whenever the consent or approval of the Lessor is required hereunder, Lessor agrees th same will not be unreasonably withheld.
- 33. Claims. The Lessor hereby appoints and constitutes Lessee as its agent and attorney-in-fact during the term of this lease to assert and enforce, at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the equipment against any vendors, manufacturers, suppliers or contractors in respect thereof.
- 34. <u>Investment Credit</u>. Lessor hereby agrees to ele and does hereby elect, to treat Lessee as having purchased the property referred to in this Agreement for the purposes of the Investment Tax Credit allowed by Section 38 of the Internal Revenue Code and to execute all necessary documents to perfect said election.

IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written.

ONEIDA & WESTERN TRANSPORTATION COMPANY

-10-

SHAMROCK COAL COMPANY, INCORPORATED

By Staffauguru

STATE OF KENTUCKY)
COUNTY OF PULASKI)

Personally appeared before me, the undersigned authority, a Notary Public in and for the above County and State, the within named E.RAY THOUSEN, JTZ., president of Oneida & Western Transportation Company, the within bargainor, with whom I am personally acquainted and who acknowledged that he, being authorized to do so, executed the foregoing instrument as president for the purposes therein contained.

Witness my hand and official seal at office, this 17 day of MAY, 1979.

Notary Public

My Commission Expires:
Ny Commission Expires September 23, 1979

STATE OF KENTUCKY)
COUNTY OF PULASKI)

Before me, a Notary Public in and for the above County and State, personally appeared B. Ray Thompson, Jr., president, with whom I am personally acquainted, and who, upon oath acknowledged himself to be the president of Shamrock Coal Company, Incorporated, the within named bargainor, a corporation, and that he as such president, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as president.

Witness my hand and official seal at office, this // day of // // , 1979.

Notary Public

My Commission Expires:

My Commission Expires September 23, 1979

SCHEDULE #1

EQUIPMENT LEASED:

77 Bathtub-type Gondola Railcars manufactured by Berwick Forge & Fabricating Company

- TERM: Unless sooner terminated as set forth in the В. lease, the term of this lease respecting each item of equipment listed on this schedule expires on June 11,
- RENT: As rent for said equipment, Lessee shall pay Lessor the sum of \$526.00 per month per car, such sum to be subject to adjustment as set forth hereinafter.

Commencing on July 1, 1980, and each July 1 thereafter (the "rental adjustment date"), each of the parties will make a market review to determine the prevailing market rate for rental for any and every item of equipment leased hereby. If the market review indicates that the rental is higher or lower than the prevailing market rate, then an adjustment in the rental shall be made for the following year, effective as of the rental adjustment date. The amount of such adjustment shall be that amount necessary for the rental to equal the prevailing market rate and shall be subject to the approval of the Trustee of the Equipment Trust to be used by Lessor to finance said equipment.

If the parties cannot mutually agree on the prevailing market rate, a qualified disinterested professional recognized in the industry (mutually acceptable to the parties) shall be employed to resolve this disagreement. The conclusion of the consultant shall be accepted by all parties until the next annual review and shall be made effective as of the rental adjustment date for made effective as of the rental adjustment date for which the adjustment was to be made. Until resolution of the dispute, Lessee shall pay Lessor at the rental rate for the previous year, and adjustment for such payments shall be made retroactive to the rental adjustment date once the dispute has been resolved. The costs of employing independent professional assistance in resolving said disagreement shall be shared one-half (1/2) by Lessor and one-half (1/2) by Lessee.

Unless sooner paid, all said rent shall be payable in any event on or before the expiration or sooner termination of this Lease.

APPROVED AND AGREED TO this llth day of June, 1979, as a schedule to that certain lease dated the 17th day of May, 1979, by and between the parties hereto, and made a part hereof.

ONEIDA & WESTERN TRANSPORTATION

COMPANY

President

SHAMROCK COAL COMPANY, INCORPORATED

SCHEDULE #2

EQUIPMENT LEASED:

77 Bathtub-type Gondola Railcars manufactured by Berwick Forge & Fabricating Company

- R. TERM: Unless sooner terminated as set forth in the lease, the term of this lease respecting each item of equipment listed on this schedule expires on July 2,
- RENT: As rent for said equipment, Lessee shall pay Lessor the sum of \$526.00 per month per car, such sum to be subject to adjustment as set forth hereinafter.

Commencing on July 1, 1980, and each July 1 thereafter (the "rental adjustment date"), each of the parties will make a market review to determine the prevailing will make a market review to determine the prevailing market rate for rental for any and every item of equipment leased hereby. If the market review indicates that the rental is higher or lower than the prevailing market rate, then an adjustment in the rental shall be made for the following year, effective as of the rental adjustment date. The amount of such adjustment shall be that amount necessary for the rental to equal the prevailing market rate and shall be subject to the approval of the Trustee of the Equipment Trust to be used by Lessor to finance said equipment.

If the parties cannot mutually agree on the prevailing market rate, a qualified disinterested professional recognized in the industry (mutually acceptable to the parties) shall be employed to resolve this disagreement. The conclusion of the consultant shall be accepted by all parties until the next annual review and shall be made affective as of the consultant shall be made effective as of the rental adjustment date for made effective as of the rental adjustment date low which the adjustment was to be made. Until resolution of the dispute, Lessee shall pay Lessor at the rental rate for the previous year, and adjustment for such payments shall be made retroactive to the rental adjustment of the rental rental adjustment of the rental adjustment of the rental adjustment of the rental rental adjustment of the rental rental adjustment of the rental ren payments shall be made retroactive to the rental adjust-ment date once the dispute has been resolved. The costs of employing independent professional assistance in resolving said disagreement shall be shared one-half (1/2) by Lessor and one-half (1/2) by Lessee.

Unless sooner paid, all said rent shall be payable in any event on or before the expiration or sooner termination of this Lease.

APPROVED AND AGREED TO this 2nd day of July, 1979, as a schedule to that certain lease dated the 17th day of May, 1979, by and between the parties hereto, and made a part hereof.

ONEIDA & WESTERN TRANSPORTATION

COMPANY

President

SHAMROCK COAL COMPANY, INCORPORATED

President

2

Exhibit B

ς	ub	1	6	a	s	e	
J	w	ᆂ	C	ч	J	$\overline{}$	

SUBLEASE OF RAILROAD EQUIPMENT

Dated as of $\bigcup UL \overline{27}$, 1979

Between

ONEIDA & WESTERN TRANSPORTATION COMPANY as Sublessor

And

SHAMROCK COAL COMPANY, INCORPORATED

AS Sublessee

THIS SUBLEASE OF RAILROAD EQUIPMENT, dated as of <u>JUL 27</u> 1979, is made by and between ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership (hereinafter called the Sublessor) and SHAMROCK COAL COMPANY, INCORPORATED, a Tennessee corporation (hereinafter called the Sublessee).

WHEREAS, Citizens Fidelity Bank & Trust Company, a
Kentucky banking corporation, acting not in its individual
capacity but solely as Trustee (hereinafter called the
Trustee) under an Equipment Trust Agreement dated as of the
date hereof (hereinafter called the Trust Agreement) between
the Trustee and the Sublessor, has agreed to purchase and
take delivery from the Sublessor of the railroad equipment
described in Exhibit A hereto (hereinafter called the Equipment)
and to lease back to the Sublessor the Equipment on the
terms and conditions set forth in the Trust Agreement;

WHEREAS, the Sublessor desires to sublease the Equipment to the Sublessee at the rental payments and for the term and upon the terms and conditions hereinafter provided; and

WHEREAS, the Sublessor intends to assign certain of its rights under this Sublease to the Trustee pursuant to an Assignment of Sublease, dated as of the date hereof (hereinafter called the Sublease Assignment), and the Sublessee will consent to the Sublease Assignment pursuant to a Sublessee's Consent and Agreement (hereinafter called the Sublessee's Consent).

NOW, THEREFORE, in consideration of the rental to be paid and the covenants hereinafter mentioned to be kept and performed by the Sublessee, the Sublessor hereby leases the Equipment to the Sublessee upon the following terms and conditions:

This Sublease is a net Section 1. Net Lease. The Sublessee's obligation to pay all rental and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Sublessee shall not be entitled to any abatement of rental or any other amounts due The following factors, the list not meant to be exclusive or to limit the generality of the foregoing, expressly will not entitle the Sublessee to any reduction of rent or other payments due under this Sublease: (i) abatements, reductions, counterclaims or setoffs due or alleged to be due by reason of any past, present or future claims of the Sublessee against the Sublessor, whether under this Sublease, or otherwise, including the Sublessee's rights by subrogation hereunder or thereunder against the Sublessor, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Equipment from whatsoever cause, (ii) any liens, encumbrances or

rights of others with respect to any of the Equipment, (iii) the prohibition of or other restriction against the Sublessee's use of all or any of the Equipment, (iv) the interference with such use by any person or entity, (v) the invalidity or unenforceability or lack of due authorization or approval of this Sublease, (vi) any present or future insolvency of or bankruptcy, reorganization or similar proceeding against the Sublessee, or (vii) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the rental and other amounts payable by the Sublessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Sublease. To the extent permitted by applicable law, the Sublessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Sublease except in accordance with the express terms hereof. Each rental or other payment made by the Sublessee hereunder shall be final and the Sublessee shall not seek to recover all or any part of such payment from the Sublessor or the Trustee for any reason whatsoever.

Section 2. Incorporation of Prime Lease. A true copy of the Trust Agreement is attached as Exhibit B hereto. Article One, Article Five, Article Six and Article Seven of the Trust Agreement are herein collectively called the Prime This Sublease is subject to and is made upon all of the terms, covenants and conditions of the Prime Lease, with the same force and effect as if fully set forth herein, except as otherwise provided herein. All the terms, covenants and conditions which the Sublessor is bound to comply with under the Prime Lease shall, except as otherwise provided herein, be binding upon the Sublessee hereunder; and all the rights and privileges of the Sublessor under the Prime Lease shall, except as otherwise provided herein, inure to the benefit of the Sublessee. It is the intention of the parties hereto that, except as otherwise provided in this Sublease, the relationship between the Sublessor and the Sublessee shall be governed by the terms of the various Articles and Sections of the Prime Lease (after substitution of the term "Sublessor" for the term "Trustee" (except in Section 5.04(b)(3), the last paragraph of Section 5.04, the legend set forth in Section 5.07, and second proviso of the second paragraph of Section 5.09), the term "Sublessee" for the term "Company" and the term "Sublease" for the term "Lease" or the term "Agreement," wherever the terms "Trustee," "Company," "Lease" and "Agreement" shall appear in the Prime Lease as if they had been set out in full in this Sublease, and that the rental payments due hereunder shall at all times be in the

same amount as the rental payments due under the Prime Lease. All references in the Prime Lease to "the Agreement" and "this Agreement" shall be deemed to include references to the Trust Agreement.

Section 3. <u>Portions of the Prime Lease Excluded</u>
From This Sublease:

Section 5.03
Section 5.04(b) (subsection 1 through 6 inclusive)
Section 5.06
Section 6.09

Section 4. Rental Payments. The rent for the various pieces of the Equipment will be as set forth in Schedules 1 and 2 attached hereto and in additional rate schedules which will be attached hereto after the date hereof. The fixing of the initial rental rates for Equipment and any subsequent changes in such rental rates shall be subject to the written approval of the Trustee. All such schedules shall be executed by both the Sublessor and Sublessee and an executed copy of all such schedules will be furnished to the Trustee.

Section 5. <u>Binding Upon Assigns</u>. Except as otherwise provided herein, the provisions of this Sublease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 6. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed to (a) in the case of the Sublessor, 300 Forest Park Boulevard, Knoxville, Tennessee, 37919, Attention: Mr. B. Ray Thompson, Jr., or such other address as may hereafter be furnished to the Sublessee in writing by the Sublessor and (b) in the case of the Sublessee, P. O. Box 10388, Knoxville, Tennessee, 37919, Attention: Mr. B. Ray Thompson, Jr., or such other address as may hereafter be furnished to the Sublessor in writing by the Sublessee. An affidavit by any person representing or acting on behalf of the Sublessor or the Sublessee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

Section 7. <u>Effect of Headings</u>. The section headings herein are for convenience only and shall not affect the construction hereof.

Section 8. <u>Counterparts</u>. This Sublease may be executed in several counterparts each of which shall be

deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 9. <u>Date Executed</u>. This Sublease shall be deemed to have been executed on the date of the acknowledgment thereof by the partner of the Sublessor who signed this Sublease on behalf of the Sublessor.

Section 10. Governing Law. The provisions of this Sublease, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the Commonwealth of Kentucky, provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

IN WITNESS WHEREOF, the Sublessor has caused its name to be signed hereto by its duly authorized partner, and the Sublessee has caused its name to be signed hereto by its officer thereunto duly authorized and duly attested, as of the day and year first above written.

By: A Many

By: A Many

SHAMROCK COAL COMPANY,

INCORPORATED

By: A Many

Title: President

ONEIDA & WESTERN TRANSPORTATION

COMMONWEALTH OF KENTUCKY)

SS:

COUNTY OF () () () ()

BEFORE ME, the undersigned authority, on this 27 day of 1979, personally appeared B. Karl 1979, personally a

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

Revelue Jane Notary Public

My commission expires: 12/27/80.

COMMONWEALTH OF KENTUCKY

On this 27 day of , 1979, before me personally appeared B. Ray Monthson, M., to me personally known who being by me duly sworn says that he is a full of Shamrock Coal Company, Incorporated, that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

This instrument prepared by:

EDWARD B. WEINBERG

of Greenebaum Doll & McDonald 3300 First National Tower Louisville, Kentucky 40202

(502) 589-4200

EXHIBIT A

Description of Trust Equipment

Description	Manufacturer	Quantity	Company's Car Numbers (all inclusive)	AAR Mechanical Designation	Date of Earliest Service
105-Ton Rotary Dump Bathtub Type Gondola Cars	Whittaker Corporation, Berwick Forge and Fabricating Division, Berwick, PA.	154	OWTX99001- OWTX99154	GTS	June 1, 1979
105-Ton Rotary Dump Bathtub Type Gondola Cars	Whittaker Corporation, Berwick Forge and Fabricating Division, Berwick, PA	26			June 1, 1979
3000 hsp. Model 5D40-2 Locomotives	General Motors Corporation, Electro-Motive Division, LaGrange, IL.	8			June 1, 1979
Steel Sheathed Bay Window Compact Body Cabooses	PACCAR, Inc., International Car Co., Division, Kenton, OH.	2			June 1, 1979

Exhibit B

ONEIDA & WESTERN TRANSPORTATION COMPANY

1979 EQUIPMENT TRUST

EQUIPMENT TRUST AGREEMENT

Dated as of **JUL 27**, 1979

By and Between

CITIZENS FIDELITY BANK & TRUST COMPANY, TRUSTEE

and

ONEIDA & WESTERN TRANSPORTATION COMPANY

TABLE OF CONTENTS

			PAGE
Parties and Form of Trust			
ARTICLE ONE			_
Section	1.01.	Definitions	8
ARTICLE TWO	Trust C	ertificates and Issuance Thereof	
Section		Issuance of Trust Certificates	12
Section	2.02.	Interests Represented by Trust	13
		Certificates; Maturity, Interest;	
- · ·		Denominations	1.4
Section		Form of Trust Certificates	14 14
Section		Execution by Trustee	15
Section	2.05.	Characteristics of Trust Certificates	13
Section	2.06.	Replacement of Lost Trust	15
Deccion	2.00.	Certificates	
Section	2.07.	Restrictions on Transfer of Trust	16
200110		Certificates	
ARTICLE THRE	E Optio	nal Prepayment of Trust Certificates	
Section	3.01.	Optional Prepayment and	17
		Prepayment Price	
Section		Notice of Prepayment	17
Section	3.03.	Payment of Trust Certificates Called	18
		for Prepayment	
ADTICLE FOUR	Acquis	ition of Trust Equipment By Trustee	
Section		Acquisition of Equipment by Trustee	18
Section		Payment of Deposited Cash; Payment	19
		by the Company	
Section	4.03.	Supporting Papers	19
Section	4.04.	Non-exclusive Nature of Obligations	22
		Hereunder	
	T	of Mount Devisionant to the Company	
Section	Lease	of Trust Equipment to the Company	22
Section		Lease of Trust Equipment Equipment Automatically Subjected	23
Section		Substituted Equipment Subject	23
Section	5.05.	Hereto	
Section	5.04.	Rental Payments	23
Section		Termination of Lease	26
Section		Substitution and Replacement of	27
50002011	2	Equipment	
Section	5.07.	Marking of Trust Equipment	30
Section		Maintenance of Trust Equipment	31
Section		Possession of Trust Equipment	33
Section	5.10.	Indemnity	35

ARTICLE SIX	Remedies	s in Event of Default	
Section		Events of Default	38
Section	6.02.	Remedies	42
Section	6.03.	Application of Proceeds	43
Section	6.04.	Waivers of Default	44
Section	6.05.	Obligations of Company Not	45
		Affected by Remedies	
Section	6.06.	Company to Deliver Trust Equipment	45
		to Trustee	
Section	6.07.	Trustee to Give Notice of Default	46
Section	6.08.	Unconditional Right of Holders of	46
		Trust Certificates to Sue for	
		Principal and Interest	
Section	6.09.	Control by Holders of Trust	46
		Certificates	
Section	6.10.	Remedies Cumulative	47
ARTICLE SEVER	N Addit:	ional Covenants and Agreements	
	by the	e Company	
Section	7.01.	Discharge of Liens	47
Section	7.02.	Payment of Expenses; Recording	48
Section	7.03.	Further Assurances	49
Section	7.04.	Merger or Consolidation	49
Section		Insurance	49
Section		Guaranty of Company	50
ARTICLE EIGHT	r Conce	rning the Holders of Trust Certificates	
Section		Evidence of Action Taken by Holders	51
		of Trust Certificates	
Section	8.02.	Proof of Execution of Instruments	51
		and of Holding of Trust Certificates	
Section	8.03.	Trust Certificates Owned By	52
		Company Deemed Not Outstanding	
Section	8.04.	Right of Revocation of Action Taken	52
ARTICLE NINE			F 2
		Acceptance of Trusts	53
Section	9.02.	Duties and Responsibilities of the	53
		Trustee; During Default; Prior to	
		Default	
Section	9.03.	Certain Rights of the Trustee	54
Section		Application of Rentals;	55
		Responsibility of Trustee to	
		Insure or Record	
Section	9.05.	Funds May be Held by Trustee;	55
2000-011		Investments in Investment Securities	
Section	9.06.	Trustee Not Liable for Delivery	56
		Delays or Defects in Equipment or	
		Title; May Perform Duties by Agents;	
		Reimbursement of Expenses; Holding of	
		Trust Certificates, Monies Held in	
		Trust	

Section	9.07.	Persons Eligible for Appointment as Trustee	57
Section	9.08.	Resignation and Removal;	58
Section	9.09.	Appointment of Successor Trustee Acceptance of Appointment by	59
Section	9.10.	Successor Trustee Merger or Consolidation of Trustee	60
ARTICLE TEN	Miscella	aneous	
		Rights Confined to Parties and	60
Section	10.02.	Holders No Recourse	60
Section	10.03.	Officers' Certificates and Opinions of Counsel; Statements to be Contained	61
		Therein	
Section	10.04.	Binding Upon Assigns	61
Section	10.05.	Notices	61
Section	10.06.	Effect of Headings	62
Section	10.07.	Counterparts	62
Section	10.08.	Date Executed	62
Section	10.09.	Governing Law	62
		Amendment or Waiver	62
EXHIBIT B S	ublease	on of Trust Equipment	
EXHIBIT C S	ublease A	Assignment	

EQUIPMENT TRUST AGREEMENT, dated as of JUL 27
1979, by and between CITIZENS FIDELITY BANK & TRUST COMPANY,
a Kentucky banking corporation, as Trustee (hereinafter called
the Trustee); and ONEIDA & WESTERN TRANSPORTATION COMPANY, a
partnership duly organized and existing under the laws of the
State of Tennessee (hereinafter called the Company).

WHEREAS, the Company has agreed to cause to be sold, transferred and delivered to the Trustee the railroad equipment described herein; and

WHEREAS, title to such railroad equipment is to be vested in and is to be retained by the Trustee, and such railroad equipment is to be leased to the Company hereunder, until title is transferred under the provisions hereof; and

WHEREAS, Oneida & Western Transportation Company Equipment Trust Certificates due December 31, 1989 (hereinafter called the Trust Certificates), are to be issued and sold in the aggregate principal amount not exceeding \$11,200,000, and the aggregate proceeds (excluding accrued interest, if any) of such sale which shall equal the aggregate principal amount of the Trust Certificates so issued and sold, shall constitute a fund to be known as the Oneida & Western Transportation Company 1979 Equipment Trust, to be applied by the Trustee in payment of the cost of the railroad equipment described herein, the remainder of the cost thereof to be paid by the Company as provided herein; and

WHEREAS, the text of the Trust Certificates and the guaranties endorsed thereon are to be substantially in the following forms:

[FORM OF TRUST CERTIFICATE]

THE TRUST INTEREST REPRESENTED BY THIS CERTIFICATE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE OFFERED, OR SOLD, AND NO TRANSFER THEREOF WILL BE MADE BY THE TRUSTEE, UNLESS THERE IS PRESENTED TO THE TRUSTEE AN OPINION OF COUNSEL SATISFACTORY TO THE TRUSTEE THAT THE PROPOSED DISPOSITION IS NOT IN VIOLATION OF THE SECURITIES ACT OF 1933, THE GENERAL RULES AND REGULATIONS THEREUNDER OR THE EQUIPMENT TRUST AGREEMENT UNDER WHICH THIS CERTIFICATE IS ISSUED.

\$	No.
The state of the s	

ONEIDA & WESTERN TRANSPORTATION COMPANY EQUIPMENT TRUST CERTIFICATE

Due December 31, 1989

Total Authorized Issue \$11,200,000

CITIZENS FIDELITY BANK & TRUST COMPANY, TRUSTEE

CITIZENS FIDELITY BANK & TRUST COMPANY, Trustee (a Kentucky banking corporation and hereinafter called the Trustee) under an Equipment Trust Agreement (hereinafter called the Agreement) dated as of , 1979, by and between the Trustee and ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership (hereinafter called the Company) hereby certifies that is entitled to an interest in the principal amount of \$ in Oneida & Western Transportation Company 1979 Equipment Trust, payable in installments as hereinafter provided, the final installment being due December 31, 1989, and to interest on the amount of unpaid principal, payable on the last day of each June and December commencing December 31, 1979, hereinafter called an Interest Payment Date or Interest Payment Dates), at the rate per annum provided herein from the date hereof until the principal amount represented by this Certificate shall have become due, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of one percent per annum in excess of the applicable interest rate provided The interest so payable on any Interest Payment Date will be paid to the person in whose name this Certificate is registered at the close of business on the fifteenth day of the month (whether or not a business day) next preceding such Interest Payment Date. Subject to Section 2.02 of the Agreement, payment of the principal of and interest on this Certificate will be made at the principal corporate office of the Trustee in the Commonwealth of Kentucky in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts, but only from and out of rentals or other monies received by the Trustee and applicable to such payment

under the provisions of the Agreement. Interest shall be computed hereunder on the basis of a 365-day year or a 366-day year, as appropriate, and actual days elapsed.

Interest on the outstanding principal amount of this Certificate shall be payable at an interest rate per annum greater than the "Prime Rate" (the publicly announced rate of interest generally charged by Citizens Fidelity Bank & Trust Company for large, unsecured, short-term commercial loans to its most creditworthy commercial borrowers) as set forth below:

Period	Interest Rate Per Annum Greater Than Prime Rate
First date of issuance of Equipment Trust Certificate(s) under the Agreement to December 31, 1982 January 1, 1983 to June 30, 1986 July 1, 1987 to December 31, 1989	•25% •5% •75%

Such interest rate shall be adjusted, from time to time, on the next day immediately following the day on which such "Prime Rate" is changed by such bank.

The principal amount of this Certificate is due and payable on the last day of June and December of each year, commencing June 30, 1980, and continuing to and including June 30, 1989 (hereinafter called Principal Payment Dates) in nineteen consecutive equal installments each equal to three and thirty-three hundredths percent (3.33%) of the face principal amount of this Certificate, and in a twentieth and final installment due December 31, 1989 in the full amount of the aggregate principal amount of this Certificate outstanding on such date.

This Certificate is one of an authorized issue of Trust Certificates in an aggregate amount not exceeding \$11,200,000 all maturing on December 31, 1989, and issued or to be issued under the Agreement pursuant to which certain railroad equipment leased to the Company (or cash or obligations defined in the Agreement as "Investment Securities" in lieu thereof, as provided in the Agreement) is

held by the Trustee in trust for the equal and ratable benefit of the registered holders of the Trust Certificates issued under the Agreement. Reference is made to the Agreement (copies of which are on file with the Trustee at its said office) for a full statement of the terms and provisions thereof, including the rights and obligations of the Company, the duties and immunities of the Trustee, and the rights of the registered holder hereof thereunder, to all of which the registered holder hereof, by accepting this Certificate, assents.

As a fund for the payment of principal of the Trust Certificates issued under the Agreement, the Agreement provides for the payment by the Company to the Trustee, on or before the last day of June and December of each year, commencing June 30, 1980, and continuing to and including June 30, 1989, of rental in an amount sufficient to pay the principal amount of Trust Certificates due and owing on each of the Principal Payment Dates.

This Certificate may be prepaid in whole or in part without premium or penalty at any time or from time to time, as provided in the Agreement and subject to the receipt of the monies by the Trustee, upon not less than thirty (30) days prior notice given as provided in the Agreement, at 100% of the outstanding principal amount hereof, together with accrued and unpaid interest to the date of payment.

The Trust Certificates are issuable as fully registered Trust Certificates. The several denominations of Trust Certificates are interchangeable upon presentation thereof for such purpose at said office of the Trustee, but only in the manner, subject to the limitations and upon payment of the charges as provided in the Agreement.

This Certificate is not transferable except in connection with procedures for presenting eligible notes and instruments for discount by the Federal Reserve Bank or as specifically permitted by the Agreement, and in accordance with the terms and provisions of the legend set forth at the head of this Certificate. The Trustee and the Company may deem and treat the person in whose name this Certificate is registered as the absolute owner hereof for the purpose of receiving payment of principal and interest and for all other purposes and shall not be affected by any knowledge or notice to the contrary.

In case of the happening of an Event of Default (as defined in the Agreement) the principal amount represented by this Certificate may become or be declared due and payable in the manner and with the effect provided in the Agreement.

This Certificate is entitled to the benefits of the guaranties which are endorsed hereon.

This Certificate shall not be valid or become obligatory for any purpose until it has been manually signed by an authorized officer of the Trustee.

This Certificate constitutes a promise to pay of the undersigned as Trustee (and not in its individual capacity.)

IN WITNESS WHEREOF, the Trustee has caused this Certificate to be signed by one of its authorized officers, by his signature.

Dated	as	of	. 1979	
- u - c u	u u	\sim \pm		- 4

CITIZENS FIDELITY BANK & TRUST COMPANY,
Trustee

By Authorized Officer

GUARANTY

ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the said Certificate, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein, provided, however, that the several liability of each of its partners under this Guaranty shall not exceed the percentage of the obligations guaranteed hereunder set forth below opposite his name:

B. Ray Thompson, Sr. 44.25%
B. Ray Thompson, Jr. 24.18%
Jesse J. Thompson 24.18%
Lindsay Young 7.39%

ONEIDA & WESTERN

TRANSPORTATION COMPANY

Partner

- lay Thompson An

GUARANTY

B. Ray Thompson, Sr., residing at Knox County, Tenn., a general partner of ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the said Certificate, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein, provided, however, that the liability of the undersigned under this Guaranty shall not exceed 44.25% of the obligations guaranteed hereunder.

GUARANTY

B. Ray Thompson, Jr., residing at Knox County, Tenn. a general partner of ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at

the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the said Certificate, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein, provided, however, that the liability of the undersigned under this Guaranty shall not exceed 24.18% of the obligations guaranteed hereunder.

GUARANTY

artner

Jesse J. Thompson, residing at Knox County, Tenn., a general partner of ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the said Certificate, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein, provided, however, that the liability of the undersigned under this Guaranty shall not exceed 24.18% of the obligations guaranteed hereunder.

GUARANTY

Lindsay Young, residing at Knox County, Tenn., a general partner of ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership, for a valuable consideration, hereby unconditionally guarantees to the registered holder of the within Certificate the prompt payment when due of the principal of said Certificate, and of the interest thereon specified in said Certificate, with interest on any overdue principal and interest, to the extent legally enforceable, at

the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the said Certificate, all in accordance with the terms of said Certificate and the Equipment Trust Agreement referred to therein, provided, however, that the liability of the undersigned under this Guaranty shall not exceed 7.39% of the obligations guaranteed hereunder.

Au my Jum.
Partner

WHEREAS, it is desired to secure to the holders of the Trust Certificates in the payment of the principal thereof, as hereinafter more particularly provided, with interest thereon, as hereinafter provided, payable on the last day of each month in each year, and to evidence the rights of the holders of the Trust Certificates in substantially the form hereinbefore set forth;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

ARTICLE ONE

Definitions

Section 1.01. <u>Definitions</u>. The following terms (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings hereinafter specified.

Affiliate of any corporation shall mean any corporation which, directly or indirectly, controls or is controlled by, or is under direct or indirect common control with, such corporation. For the purposes of this definition, control (including controlled by and under common control with), as used with respect to any corporation, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, whether through the ownership of voting securities or by contract or otherwise.

Assignments shall mean assignments by the Company to the Trustee of the subleases permitted by Section 5.09, substantially in the form annexed hereto as Exhibit C.

Company shall mean Oneida & Western Transportation Company, a Tennessee partnership, and any successor or successors to it complying with the provisions of Section 5.09 and Section 7.04.

Corporate Trust Office shall mean the principal office of the Trustee in the Commonwealth of Kentucky, at which the corporate trust business of the Trustee shall, at the time in question, be administered, which office is, at the date of execution of this Agreement, located at Citizens Plaza, 500 West Jefferson Street, Louisville, Kentucky 40202.

Cost, when used with respect to Equipment, shall mean the actual cost thereof (including freight charges, if any, from the manufacturer's plant to a point of delivery to the Company and applicable local or state sales taxes, if any), as evidenced by the manufacturer's invoice with respect to such Equipment.

Deposited Cash shall mean the aggregate of (a) cash on deposit with or to the credit of the Trustee as provided in Section 2.01 and, when required or indicated by the context, any Investment Securities purchased by the use of such cash pursuant to the provisions of Section 9.05, and (b) any sums restored to Deposited Cash from rentals pursuant to Section 5.04(b)(2)(b) and on deposit with or to the credit of the Trustee.

Equipment shall mean railroad equipment of the type referred to in Exhibit A which, in the case of the Equipment specified in Exhibit A, shall be new Equipment first put into service on or after the dates specified in Exhibit A, or if approved by the holders of not less than 65% in principal amount of all outstanding Trust Certificates, other railroad equipment first put into service no earlier than June 1, 1979, but shall not include any special devices, racks or assemblies, at any time attached or affixed to any such equipment, the cost or purchase price of which is not included in the Cost of such equipment and the title to which is in a person, firm or corporation other than the Company or the Trustee.

Event of Default shall mean any event specified in Section 6.01 to be an Event of Default.

The word <u>holder</u>, when used with respect to Trust Certificates, shall mean the registered holder of such Trust Certificates and shall include the plural as well as the singular number.

Interest Payment Dates shall mean the last day of each June and December in each year, commencing December 31, 1979.

Investment Securities shall mean (a) bonds, notes or other debt securities which are issued by the United States Government or any Agency thereof or which are guaranteed as to principal and interest by the United States Government; (b) bonds, notes and other debt securities which are direct obligations of any state or territory of the United states or of any county, city, district or other subdivision of any such state or territory, provided that such security shall mature within 12 months of the date when it is purchased by the Trustee; (c) open market commercial paper rated A-1 by Standard & Poor's Corporation of a domestic corporation engaged primarily in business within the United States and having a net worth of not less than \$50,000,000, provided such commercial paper matures not more than one year from the date of its issuance, and (d) certificates of deposit of or time deposits in Citizens Fidelity Bank & Trust Company or in banks or trust companies incorporated and doing business under the laws of the United States of America or one of the states thereof having a capital and surplus aggregating at least \$25,000,000, provided that such certificate of deposit or time deposit matures within 12 months of the date of its purchase by the Company.

Long-Term Purchaser shall mean the purchaser of Trust Certificates designated in the Request of the Company described in Section 3.01 of this Agreement.

Officer's Certificate shall mean a certificate signed by a general partner of the Company. Each such certificate shall include the statements provided for in Section 10.03 if, and to the extent, required by the provisions thereof.

Opinion of Counsel shall mean an opinion in writing signed by legal counsel, provided that any such legal counsel shall be satisfactory to the Trustee. Each such opinion shall include the statements provided for in Section 10.03 if and to the extent required by the provisions thereof. The acceptance by the Trustee of, and its action on, an Opinion of Counsel shall be sufficient evidence that such counsel is satisfactory to the Trustee.

Original Issue Date of any particular Trust
Certificate shall mean the earlier of (a) the date of
such Trust Certificate or (b) the date of the first
Predecessor Certificate issued to evidence all or a
portion of the same interest in the trust created
hereunder as that evidenced by such particular Trust
Certificate; provided that, if Predecessor Certificates
of such particular Trust Certificates have different
Original Issue Dates, the portions of such particular
Trust Certificate attributable to such Predecessor
Certificates shall be deemed to have such different
Original Issue Dates.

Predecessor Certificates of any particular Trust Certificate shall mean every previous Trust Certificate evidencing all or a portion of the same interest in the trust created hereunder as that evidenced by such particular Trust Certificate; and, for the purposes of this definition, any Trust Certificate executed and delivered under Section 2.06 in lieu of a lost, destroyed or stolen Trust Certificate shall be deemed to evidence the same interest in the trust created hereunder as the lost, destroyed or stolen Trust Certificate.

Principal Payment Dates shall mean the last day of June and December of each year, commencing June 30, 1980, and continuing to and including June 30, 1989.

Request shall mean a written request for the action therein specified, delivered to the Trustee, dated not more than ten days prior to the date of delivery to the Trustee and signed on behalf of the Company by a general partner of the Company.

Responsible Officer shall mean the chairman of the board of directors, the president, every vice president, the cashier, and every other officer or assistant officer of the Trustee other than those specifically mentioned above, to whom any corporate trust matter is referred because of his knowledge of, or familiarity with, the particular subject.

Sublease shall mean that certain lease of the Trust Equipment described therein by and between the Company and the Sublessee, dated on or as of the date of this Agreement and substantially in the form of Exhibit B hereto.

Sublease Assignment shall mean that certain Sublease Assignment by the Company in favor of the Trustee dated on or as of the date of this Agreement and substantially in the form of Exhibit C hereto.

Sublessee shall mean Shamrock Coal Company, Incorporated, a Tennessee corporation.

Trust Certificates shall mean Oneida & Western Transportation Company 1979 Equipment Trust Certificates due December 31, 1989 issued hereunder.

Trust Equipment shall mean all equipment at the time subject to the terms of this Agreement.

Trustee shall mean Citizens Fidelity Bank & Trust Company, and, subject to the provisions of Article Nine, any successor as trustee hereunder.

The words herein, hereof, hereby, hereto, hereunder and words of similar import refer to this Agreement as a whole and not to any particular Article, Section, paragraph or subdivision hereof.

ARTICLE TWO

Trust Certificates and Issuance Thereof

Section 2.01 <u>Issuance of Trust Certificates</u>. The aggregate proceeds from the sale of any of the Trust Certificates shall, forthwith upon the issuance thereof, be deposited in cash with the Trustee and thereupon, the Trustee shall issue and deliver, as the Company shall direct by

Request, Trust Certificates in the aggregate principal amount so sold. The aggregate principal amount of Trust Certificates which shall be executed and delivered by the Trustee hereunder shall not exceed \$11,200,000, except as provided in Sections 2.05, 2.06 and 3.02.

Section 2.02. <u>Interests Represented by Trust</u>
<u>Certificates; Maturity; Interest; Denominations</u>. Each of the
<u>Trust Certificates shall represent an interest in the amount</u>
therein specified in the trust created hereunder.

The principal amount of the Trust Certificates is due and payable on each of the Principal Payment Dates in nineteen consecutive equal installments each equal to three and thirty—three hundredths percent (3.33%) of the sum of the aggregate principal amount of Trust Certificates outstanding and in a twentieth and final installment due December 31, 1989 in the full amount of the aggregate principal amount of Trust Certificates outstanding on such date.

Subject to Section 2.05(f), each of the Trust Certificates shall be dated the date of its execution by the Trustee, and, except as provided in this Section 2.02, shall bear interest on the principal amount specified therein, payable on the Interest Payment Dates in each year, at the applicable rate per annum set forth therein from the date of such Trust Certificate until the principal amount represented by such Trust Certificate shall have become due, with interest on any overdue principal and interest, to the extent legally enforceable, at the rate of one percent (1%) per annum in excess of such interest rate. The person in whose name any Trust Certificate is registered at the close of business on any record date (as hereinafter defined) with respect to any Interest Payment Date shall be entitled to receive the interest payable on such Interest Payment Date notwithstanding the cancellation of such Trust Certificate upon any reqistration of transfer or exchange subsequent to such record date and prior to such Interest Payment Date. The term "record date" as used in this Section 2.02 with respect to any Interest Payment Date shall mean the fifteenth day of the month (whether or not a business day) next preceding such Interest Payment Date.

The principal and interest on the Trust Certificates shall be payable at the Corporate Trust Office in such coin or currency of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. Notwithstanding the provisions of the preceding sentence of this paragraph, in the case of payments of principal and interest to be made on a Trust Certificate not then to be paid in full, upon Request and deposit with the Trustee of an agreement of the holder of such Trust Certificate (the responsibility of such holder to be satisfactory to the Company) obligating such holder, prior to any transfer or other disposition thereof, to surrender the same to the Trustee for notation thereon of the installments of principal amount represented thereby theretofore paid in whole or in part, the Trustee will mail its check on the date each such payment is due to such registered holder at his address shown on the registry books maintained by the Trustee (or if requested transmit such funds by wire); provided, however, that this paragraph shall not apply to the original purchasers of the Trust Certificates or to any other purchaser which purchases 15% or more of the outstanding Trust Certificates from the original purchasers, and the Company shall direct the Trustee by Request to make payments of principal and interest to such original purchaser, or such other purchaser, by check payable in, or by wire of, immediately available funds (and the Company shall make such funds available to the Trustee) at their respective principal or "home office" addresses which addresses shall be supplied to the Trustee by the Company.

-14

Section 2.03. Form of Trust Certificates. The Trust Certificates shall be in substantially the form hereinbefore set forth.

Section 2.04. Execution by Trustee. The Trust Certificates shall be signed in the name and on behalf of the Trustee by the manual signature of one of its authorized officers. In case any officer of the Trustee whose signature shall appear on any of the Trust Certificates, shall cease to be such officer of the Trustee before the Trust Certificates shall have been issued and delivered by the Trustee or shall not have been acting in such capacity on the date of the Trust Certificates, such Trust Certificates may be adopted by the Trustee and be issued and delivered as though such person had not ceased to be or had been such officer of the Trustee.

Section 2.05. Characteristics of Trust Certificates.

- (a) The Trust Certificates shall be registered, as to both principal and interest, in the name of the holder and dated the date funds are disbursed by the holder.
- (b) The several denominations of Trust Certificates shall be interchangeable in authorized denominations at the Corporate Trust Office.
- (c) Anything contained herein to the contrary notwithstanding, the parties may deem and treat the registered holder of any Trust Certificate as the absolute owner of such Trust Certificate for all purposes and shall not be affected by any knowledge or notice to the contrary.
- (d) The Trustee shall cause to be kept at the Corporate Trust Office books for the transfer and registration of the Trust Certificates.
- (e) No service charge shall be made for any transfer or exchange of Trust Certificates, but for any transfer or exchange the Trustee shall require the payment of a sum sufficient to reimburse it for any governmental charge connected therewith.
- (f) Each Trust Certificate delivered pursuant to any provision of this Agreement in exchange for or substitution for, or upon the transfer of, the whole or any part, as the case may be, of one or more Trust Certificates shall carry all the rights to interest accrued and unpaid, and to accrue, which were carried by the whole or such part, as the case may be, of such one or more other Trust Certificates, and, notwithstanding anything contained in this Agreement, such Trust Certificates shall be so dated that neither gain nor loss in interest shall result from such exchange, substitution or transfer.

Section 2.06. Replacement of Lost Trust Certificates. In case any Trust Certificate shall become mutilated or defaced or be lost, destroyed or stolen, then on the terms herein set forth and not otherwise, the Trustee shall execute and deliver a new Trust Certificate of like tenor and date, and bearing such identifying number or designation as the

Trustee may determine, in exchange and substitution for, and upon cancellation of, the mutilated or defaced Trust Certificate, or in lieu of or in substitution for the same if lost, destroyed or stolen. The applicant for a new Trust Certificate shall furnish to the Trustee and the Company evidence to their satisfaction of the loss, destruction or theft of such Trust Certificate alleged to have been lost, destroyed or stolen and of the ownership and authenticity of such mutilated, defaced, lost, destroyed or stolen Trust Certificate, and also shall furnish such security or indemnity as may be required by the Trustee in its discretion, and shall pay all expenses and charges of such substitution or exchange. All Trust Certificates are held and owned upon the express condition that the foregoing provisions are exclusive in respect of the replacement of mutiliated, defaced, lost, destroyed or stolen Trust Certificates and shall preclude any and all other rights and remedies, any law or statute now existing or hereafter enacted to the contrary notwithstanding.

Section 2.07. Restrictions on Transfer of Trust Certificates. The Trust Certificates are not transferable except in connection with procedures for presenting eligible notes and instruments for discount by the Federal Reserve Bank, except also that the Trust Certificates may be transferred (in accordance with the terms and provisions of the legend placed on each Trust Certificate): (i) by any bank to another bank under the same ownership as the assigning bank and (ii) by United American Bank so long as upon such terms as are in form and substance acceptable to the Company and the Trustee. Purchaser of Trust Certificates from The Trustee shall represent at the time of purchase that such Trust Certificates are not being acquired with any view to the distribution thereof within the meaning of the Securities Act of 1933, as amended (the "1933 Act"), or the General Rules and Regulations (the "Rules") promulgated thereunder, but subject, nevertheless, to any requirement of law that the disposition of its property shall at all times be within its control. Neither such purchaser nor any subsequent transferee of any Trust Certificates shall sell or otherwise dispose of any such Trust Certificates except in accordance with the 1933 Act, the Rules and this Agreement, and the Trustee shall not be obligated to effect a transfer of any such Trust Certificates without having received an opinion of counsel satisfactory to it that the proposed disposition may be effected without violation of the 1933 Act, the Rules and this Agreement. The Trust Certificates shall bear a legend referring to the foregoing restrictions on disposition substantially as follows:

"The trust interest represented by this Certificate has not been registered under the Securities Act of 1933 and may not be offered, or sold, and no transfer thereof

will be made by the Trustee, unless there is presented to the Trustee an opinion of counsel satisfactory to the Trustee that the proposed disposition is not in violation of the Securities Act of 1933, the General Rules and Regulations thereunder or the Equipment Trust Agreement under which this Certificate is issued."

ARTICLE THREE

Optional Prepayment of Trust Certificates

Section 3.01. Optional Prepayment and Prepayment The Trust Certificates may be prepaid in whole or in part without premium or penalty at any time or from time to time at the Request of the Company and subject to the receipt of the monies by the Trustee, upon not less than thirty (30) days prior notice given as provided in this Agreement, at 100% of the outstanding principal amount hereof, together with accrued and unpaid interest to the date of payment, provided, however, that said Request shall designate a Long-Term Purchaser as purchaser of Trust Certificates in the aggregate principal amount of the Trust Certificates optionally prepaid and shall set forth a rate of interest applicable to the Trust Certificates to be purchased by the Long-Term Purchaser. Trust Certificates issued by the Trustee to the Long-Term Purchaser shall be substantially in the form of the Trust Certificates and shall have endorsed thereon the guaranties substantially in the form of the guaranties of the Trust Certificates, except that the applicable interest rate provided in the Trust Certificates issued to the Long-Term Purchaser shall be the same rate as that set forth in the said Request of the Company.

Section 3.02. Notice of Prepayment. The Trustee shall mail a notice of prepayment at least 30 days prior to each prepayment date to the holders of the Trust Certificates so to be prepaid in whole or in part, at their last addresses as they shall appear upon the registry books; but failure to give or receive such notice, or any defect therein, shall not affect the validity of any proceedings for the prepayment of Trust Certificates.

The notice of prepayment shall specify the date for prepayment and shall state that, subject to Section 2.02, payment of the principal amount of Trust Certificates or portions thereof to be prepaid (together with all accrued and

unpaid interest thereon) will be made at the Corporate Trust Office upon presentation and surrender of such Trust Certificates, that accrued interest to the date fixed for prepayment will be paid as specified in said notice, and that from and after said date, interest thereon or on the portions thereof to be prepaid will cease to accrue.

Section 3.03. Payment of Trust Certificates Called for Prepayment. The Company on or before the prepayment date specified in the notice of prepayment having deposited with the Trustee an amount in cash sufficient to prepay all the Trust Certificates or portions thereof called for prepayment, the Trust Certificates or portions thereof called for prepayment shall become due and payable on such prepayment date, subject to Section 2.02, at the Corporate Trust Office, and from and after such prepayment date, interest on such Trust Certificates or portions thereof shall cease to accrue and such Trust Certificates or portions thereof shall no longer be deemed to be outstanding hereunder and shall cease to be entitled to the benefit of this Agreement except to receive payment from the monies reserved therefor in the hands of the Trustee. The Trustee shall hold the prepayment monies in trust for the holders of the Trust Certificates or portions thereof called for prepayment and, subject to Section 2.02, shall pay the same to such holders respectively upon presentation and surrender of such Trust Certificates.

All Trust Certificates prepaid under this Article Three shall be cancelled by the Trustee, subject to Section 2.02, and except as provided in Section 3.01 hereof, no Trust Certificates shall be issued hereunder in place thereof. At the written request of the Company, the Trustee shall deliver to the Company cancelled Trust Certificates or shall destroy cancelled Trust Certificates held by it and deliver a certificate of destruction to the Company.

ARTICLE FOUR

Acquisition of Trust Equipment by Trustee

Section 4.01. Acquisition of Equipment by Trustee. The Company shall, from time to time, cause to be sold, assigned and transferred to the Trustee, as the Trustee for the holders of the Trust Certificates, the Equipment described in Exhibit A hereto. It is understood that the Company will purchase such Equipment from the manufacturers described in

Exhibit A hereto. Such Equipment shall be delivered to the person or persons designated by the Trustee as its agent or agents to receive such delivery (who may be one or more of the officers or agents of the Company) and the certificate of any such agent or agents as to such delivery shall be conclusive evidence of such delivery.

In the event that the Company shall deem it necessary or desirable to procure for the use of the Company, and to include in the trust hereby created, other Equipment in lieu of or in addition to any of the Equipment specifically described in Exhibit A hereto prior to the delivery of such Equipment to the Trustee or its agent or agents, the Company may cause to be sold, assigned and transferred to the Trustee such other Equipment, to be included under the Trust, if acquisition of such other Equipment is approved by the holders of not less than 65% in principal amount of all outstanding Trust Certificates and such other Equipment is first put into service no earlier than June 1, 1979.

Section 4.02. Payment of Deposited Cash; Payment by the Company. From time to time, when and as any of the Trust Equipment shall have been delivered to the Trustee or its agent or agents pursuant to Sections 4.01 and 4.03, the Trustee shall pay, upon Request, to the manufacturers or owners (or to the Company if it shall be the owner) of the delivered Trust Equipment out of Deposited Cash an amount which will equal 90% of the aggregate Cost of such Trust Equipment, as specified in the Officer's Certificate furnished to the Trustee pursuant to Section 4.03(b).

The Company covenants that, contemporaneously with any payment by the Trustee pursuant to this Section 4.02, if the seller of such delivered Trust Equipment shall not be the Company, the Company will either pay to the Trustee in cash an amount which will equal 10% of the aggregate Cost of such Trust Equipment (for payment over to such seller) or deliver to the Trustee an executed counterpart of a receipt from such seller evidencing the direct payment by the Company to such seller of 10% of the aggregate Cost of such Trust Equipment.

Section 4.03. <u>Supporting Papers</u>. The Trustee shall not pay out any Deposited Cash against the delivery of any of the Trust Equipment unless and until it has received the following supporting papers which shall be in form and substance satisfactory to the Trustee and its special counsel:

- (a) A Certificate of the agent or agents designated by the Trustee to receive delivery of such Trust Equipment, stating that the Trust Equipment described and specified therein by number or numbers has been delivered to such agent or agents;
- (b) An Officer's Certificate from the Company which shall state (i) that such Trust Equipment is Equipment as herein defined and has been marked in accordance with Section 5.07, (ii) that the Cost of such Trust Equipment is in an amount therein specified or is not less than the amount therein specified, (iii) the date each unit of such Trust Equipment was first put into use or that such unit was first put into use not earlier than a specified date, (iv) whether such Trust Equipment has been used or operated by a person or persons other than the Company, (v) whether such Trust Equipment is then subject to a lease and, if so, the name of each lessee (and if such Trust Equipment is not described in Exhibit A as of the date of execution hereof, that same is or will be subject to a lease (with the name of the lessee being specified), and such lease has been approved with respect to form and substance by the holders of not less than 65% in principal amount of all outstanding Trust Certificates and the same is put into service not earlier than June 1, 1979), (vi) that no Event of Default has occurred and is continuing and (vii) that in the opinion of the signer, all conditions provided for in this Agreement relating to the payment in question, have been complied with;
- (c) An Officer's Certificate from the Company which shall state the actual fair value, in the opinion of the signer, of such Trust Equipment as of the date of the above-mentioned Request;

- (d) A bill or bills of sale of such Trust Equipment from the Company as owner thereof to the Trustee, which bill or bills of sale shall contain a warranty or guaranty to the Trustee that the title to the Trust Equipment described therein is in the Company and is free and clear of all liens and encumbrances (including any leasehold interest therein);
- (e) An opinion of counsel to the effect (i) that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in and accompanying such opinion, to vest in the Trustee free from all liens and encumbrances (including any leasehold interest therein) the title so transferred to the Trustee, and (ii) that, in the opinion of such counsel, all conditions precedent provided for in this Agreement relating to the payment in question, have been complied with; and
- (f) An opinion of Messrs. McCampbell, Young, Bartlett, Hollow & Marquis, counsel for the Company, to the effect that (i) the Agreement, the Sublease Assignment and Assignments of any subleases (which shall be specified) permitted by Section 5.09 of such Trust Equipment and any amendments or supplements thereto or hereto, the Sublease and any such subleases have been duly authorized, executed and delivered by the Company and constitute, insofar as the Company is concerned, legal, valid and binding obligations and (ii) the Trustee is vested with all the right, title and interest of the Company in and to the Sublease and such subleases, as amended or supplemented, purported to be assigned to the Trustee by the assignment thereof.
- (g) An opinion of Messrs. McCampbell, Young, Bartlett, Hollow & Marquis, counsel for the Sublessee, to the effect that the Sublease and consent of the Sublessee to the Sublease Assignment have been duly authorized, executed and delivered by the Sublessee and constitute, insofar as the Sublessee is concerned, legal, valid and binding obligations.

The Company will cause to be sold, assigned and transferred to the Trustee Equipment in such amount and of such Cost that the aggregate final Cost of the Trust Equipment will not be less than 110% of the aggregate principal of said Trust Certificates.

Section 4.04. Non-exclusive Nature of Obligations
Hereunder. Anything in this Agreement contained to the
contrary notwithstanding, it is expressly understood that the
Company and any Affiliate thereof may enter into and perform
at any time and from time to time other equipment financing
agreements of any type, including other equipment trust
agreements or conditional sale agreements with persons who may
or may not be parties to this Agreement.

ARTICLE FIVE

Lease of Trust Equipment to the Company

Section 5.01. Lease of Trust Equipment. The Trustee does hereby let and lease to the Company all of the Trust Equipment for a term commencing on the date or dates of delivery of the Trust Equipment to the Trustee pursuant to Section 4.01 and ending on December 31, 1989.

THE TRUSTEE HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE TRUST EQUIPMENT OR ANY COMPONENT THEREOF DELIVERED TO THE COMPANY HEREUNDER, AND THE TRUSTEE MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE TRUST EOUIPMENT OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE TRUST EQUIPMENT OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE TRUST EQUIPMENT OR ANY COMPONENT THEREOF, (EITHER UPON DELIVERY THEREOF TO THE COMPANY OR OTHERWISE), it being agreed that all such risks, as between the Trustee and the Company are to be borne by the Company but the Trustee hereby irrevocably appoints and constitutes the Company its agent and attorney-in-fact during the term hereof to assert and enforce from time to time, in the name of and for the account of the Trustee and/or the Company, as their interests may appear, at the Company's sole cost and expense, whatever claims and rights the Trustee may have against the manufacturer of the

Trust Equipment. The Trustee shall have no responsibility or liability to the Company or any other person with respect to any of the following: (i) any liability loss or damage caused or alleged to be caused directly or indirectly by any Trust Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstance in connection therewith; (ii) the use, operation or performance of any Trust Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Trust Equipment.

Section 5.02. Equipment Automatically Subjected. As and when any Equipment shall from time to time be delivered hereunder to the Trustee or its agent or agents the same shall, ipso facto, and without further instrument of lease or transfer, pass under and become subject to all the terms and provisions hereof.

Section 5.03. Substituted Equipment Subject Hereto. In the event that the Company shall, as provided in Section 4.01, 4.03 or 5.06, cause to be transferred to the Trustee other equipment in addition to or in substitution for any of the Equipment herein specifically described or subjected hereto, such other Equipment shall be included as part of the Trust Equipment by supplement hereto to be executed by the Trustee and the Company and to be recorded with the Interstate Commerce Commission pursuant to the requirements of 49 U.S.C. §11303 and shall be subject to all the terms and conditions hereof in all respects as though it had been part of the Trust Equipment herein specifically described.

Section 5.04. Rental Payments. (a) The Company hereby accepts the lease of all the Trust Equipment and covenants and agrees to accept delivery and possession hereunder of the Trust Equipment; and the Company covenants and agrees to pay to the Trustee at the Corporate Trust Office (or in the case of taxes, to the proper taxing authority), in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, rent hereunder which shall be sufficient to pay and discharge the items described in the following paragraph, when and as the same shall become due and payable (whether or not any of such items shall become due and payable prior to the delivery and lease to the Company of any of the Trust Equipment);

•

- (b) The Company shall pay to the Trustee as hereinafter provided as rental for the Trust Equipment (notwithstanding that any of the Trust Certificates shall have been acquired by the Company or shall not have been presented for payment), the following:
 - (1) An amount equal to one-half percent (.5%) per annum of the average daily "unused portion," i.e., the amount by which \$11,200,000 exceeds the aggregate outstanding principal amount of the Trust Certificates, calculated from the date hereof until June 30, 1980, payable by the tenth (10th) day following the end of each calendar quarter included within said period.
 - (2) from time to time upon demand of the Trustee (a) the necessary and reasonable expenses of the trust created hereby, including compensation at the rate of \$6,000 payable by the Company upon the execution and delivery of this Agreement and \$500 for each year (or portion thereof) in which the Trustee acts under this Agreement, and expenses provided for herein, and (b) an amount equal to any expenses incurred or loss of principal (including interest accrued thereupon at the time of purchase) in connection with any purchase, sale, redemption or payment at maturity of Investment Securities;
 - (3) from time to time upon demand of the Trustee any and all taxes, assessments and governmental charges upon or on account of the income or property of the Trust, or upon or on account of this Agreement, which the Trustee as such may be required to pay;
 - (4) (a) the amounts of the interest payable on the Trust Certificates when and as the same shall become payable, and (b) interest at the rate of one percent (1%) per annum in excess of the applicable interest rate set forth in the Trust Certificates from the due date, upon the amount of any installments of rental payable under this subparagraph (4) and the following subparagraphs (5) and (6) which shall not be paid when due, to the extent legally enforceable;

- (5) as payments of principal of the Trust Certificates, on or before the last day of June and December of each year, commencing June 30, 1980, and continuing to and including June 30, 1989, an amount in cash sufficient to pay three and thirty-three hundredths percent (3.33%) of the sum of the aggregate principal amount of Trust Certificates outstanding and on or before December 31, 1989 an amount of cash sufficient to pay the remaining outstanding principal balance of Trust Certificates on such date.
- (6) the principal of the Trust Certificates (other than principal paid in accordance with Section 5.04(b) (5)), upon the maturity thereof, whether by declaration or otherwise.

The Company's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Company shall not be entitled to any abatement of rent or any other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions, counterclaims or setoffs due or alleged to be due by reason of any past, present or future claims of the Company against the Trustee, whether under this Agreement or otherwise, including the Company's rights by subrogation hereunder or thereunder against the Trustee or otherwise; nor, except as otherwise expressly provided herein, shall this lease terminate, or the respective obligations of the Trustee or the Company be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Trust Equipment from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Trust Equipment, the prohibition of or other restriction against the Company's use of all or any of the Trust Equipment, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Agreement, any insolvency of or bankruptcy, reorganization or similar proceeding against the Company, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Company hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions hereof. The Company hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise to terminate, cancel, quit or surrender the lease of any of the Trust Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Company hereunder shall be final and the Company shall not seek to recover all or any part of such payment from the Trustee for any reason whatsoever.

This lease has been entered into on the basis that the lease is a financing lease and that the Company shall be entitled to the deductions, credits and other benefits provided by the Internal Revenue Code of 1954, as amended to the date hereof, available to beneficial owners of property. The Trustee shall not directly or indirectly take any action or file any document with the Internal Revenue Service inconsistent with the foregoing. Provided, further, that to the extent necessary for federal income tax purposes, the Trustee hereby agrees to elect, and does hereby elect, to treat the Company as having purchased the property referred to in this lease for the purposes of the Investment Tax Credit allowed by Section 38 of the Internal Revenue Code of 1974 and to execute all necessary documents to effect said election.

Nothing herein or in the Trust Certificates contained shall be deemed to impose on the Trustee or on the Company any obligation to pay to the holder of any Trust Certificate the amount of any tax, assessment or governmental charge required by any present or future law of the United States of America, or of any state, county, municipality or other taxing authorities thereof, to be paid in behalf of, or withheld from the amount payable to, the holder of any Trust Certificate.

The Company shall not be required to pay any tax, assessment or governmental charge so long as it shall in good faith and by appropriate legal proceedings contest the validity thereof, provided that the rights or interests of the Trustee or the holders of the Trust Certificates will not be materially endangered thereby and the Company shall have furnished the Trustee with an Opinion of Counsel to such effect.

Section 5.05. Termination of Lease. At the termination of the lease provided herein and after all payments due or to become due from the Company hereunder shall have been completed and fully made to the Trustee (1) any monies remaining in the hands of the Trustee after providing for payment in full of all the outstanding Trust Certificates

- (1) An Officer's Certificate stating (i) the fair value, as of the date of said Request, of the Trust Equipment so to be assigned or transferred by the Trustee, (ii) that such assignment or transfer will not impair the security under this Agreement in contravention of the provisions hereof and (iii) the fair value of such substituted units of Equipment as of such date;
- (2) An Officer's Certificate stating (i) the date each unit of Trust Equipment so to be assigned or transferred to the Trustee was first put into use (or that such unit was first put into use not later than a specified date), (ii) the original Cost of each unit of the Equipment so to be substituted and the day it was first put into use (or that such unit was first put into use not earlier than a specified date), (iii) whether such unit so to be substituted has been used or operated by a person or persons other than the Company, (iv) whether such unit so to be substituted is then or will be subject to a lease and, if so, the name of the lessee and such other information as the Trustee may request to verify the compliance of such lease with Section 5.09, (v) that each such unit so to be substituted is Equipment as herein defined and has been marked in accordance with Section 5.07, (vi) that no Event of Default has occurred and is continuing and (vii) that in the opinion of the signer, all conditions precedent provided for in this Agreement relating to such substitution, have been complied with;
- (3) A certificate and a bill or bills of sale in respect of such substituted Equipment as provided for in subparagraphs (a) and (d) of the first paragraph of Section 4.03; and
- (4) An Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee the rights and interests to such substituted Equipment contemplated by this Agreement free from all liens and encumbrances (including any

leasehold interest therein), (ii) all such Assignments and any amendments or supplements thereto or hereto have been duly authorized, executed and delivered by the Company and constitute, insofar as the Company is concerned, legal, valid and binding obligations, (iii) the Trustee is vested with all the right, title and interest of the Company in and to such subleases, as amended or supplemented, purported to be assigned to the Trustee by such Assignments, and (iv) all conditions precedent provided for in this Agreement with respect to such substitution, have been complied with.

At the time of delivery of any Request pursuant to the first paragraph of this Section 5.06, the Company shall, if cash is to be paid to the Trustee in respect of the Trust Equipment to be assigned or transferred by the Trustee, deliver to the Trustee papers corresponding to those set forth in the second paragraph of this Section 5.06 insofar as they relate to the action requested.

3

Cash deposited with the Trustee pursuant to this Section 5.06 or pursuant to subparagraph (1) of the first paragraph of Section 5.08 shall, from time to time, be paid over by the Trustee to the Company upon Request, against conveyance to the Trustee of Equipment having a fair value as of the date of said Request, not less than the amount of cash so paid and upon compliance by the Company with all of the provisions of the second paragraph of this Section 5.06 insofar as they relate to the action requested.

For all purposes of this Section 5.06, subparagraph (1) of the first paragraph of Section 5.08 and Section 6.01(b), fair value shall be determined as follows (and the manner of such determination shall be set forth in each Officer's Certificate furnished in respect thereof):

(1) the fair value of any unit of the Trust Equipment assigned or transferred by the Trustee as provided in this Section 5.06, or worn out, unsuitable for use, lost, destroyed or taken or requisitioned by condemnation or otherwise as set forth in subparagraph (1) of the first paragraph of Section 5.08, shall be deemed to be the greater of (a) the actual fair value thereof or (b) the Cost thereof as theretofore certified to the Trustee less 1/25th of such Cost for

each full period of one year elapsed between (i) the later of July 1, 1979, and the date such unit was first put into service, as certified to the Trustee, and (ii) the date of the Request furnished pursuant to this Section 5.06 or the Officer's Certificate furnished pursuant to subparagraph (1) of the first paragraph of Section 5.08; and

(2) the fair value of any unit of Equipment conveyed to the Trustee as provided in this Section 5.06 shall be deemed to be the lesser of (a) the actual fair value thereof or (b) the Cost of such unit as certified to the Trustee less depreciation at a rate not less than 1/25th of such Cost for each full period of one year elapsed between (i) the later of July 1, 1979, and the date such unit was first put into service, as certified to the Trustee, and (ii) the date of the Request furnished pursuant to this Section 5.06.

The actual fair value of any unit of Trust Equipment shall be the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than a lessee currently in possession or a used equipment dealer) and an informed and willing seller under no compulsion to sell (and in such determination, costs of removal from the location of current use shall not be a deduction from such value).

Section 5.07. Marking of Trust Equipment. The Company agrees that there shall be plainly, distinctly, permanently and conspicuously stenciled upon each side of each unit of the Trust Equipment the following words, in letters not less than one inch in height:

TITLE TO THIS CAR IS VESTED IN CITIZENS FIDELITY BANK AND TRUST COMPANY, LOUISVILLE, KY., AS TRUSTEE UNDER AN EQUIPMENT TRUST AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION.

Such marks shall be such as to be readily visible and as to indicate plainly a Trustee's ownership of each such unit of the Trust Equipment.

In case, prior to the termination of the lease provided for herein, any of such plates or marks shall at any time be removed, defaced or destroyed, the Company shall forthwith cause the same to be restored or replaced.

The Company shall not change or permit to be changed the numbers of any of the Trust Equipment at any time covered hereby (or any numbers which may have been substituted as herein provided) except in accordance with a statement of new numbers to be substituted therefor which previously shall have been filed with the Trustee by the Company which shall be filed and recorded in like manner as this Agreement.

Any unit of Trust Equipment required to be marked pursuant to this Section 5.07 may be lettered, with the name or initials or other insignia customarily used by the Company on railroad equipment owned by it of the same or a similar type or in any other appropriate manner, for convenience of identification of the rights of the Company to use the units of Trust Equipment permitted under this Agreement, and may also be lettered in the case of a sublease of any Trust Equipment made pursuant to Section 5.09 hereof, in such manner as may be appropriate for convenience of identification of subleased interest therein; but, except as provided in the preceding paragraph, the Company, from and after the date hereof and during the continuance provided for herein, will not allow the name of any person, firm, association or corporation to be placed on or to remain on any unit of Trust Equipment as a designation which might be interpreted as a claim of ownership thereof by the Company or any person, firm, association, or corporation other than the Trustee.

Section 5.08. Maintenance of Trust Equipment. The Company agrees that it will maintain and keep or cause others to maintain and keep the Trust Equipment in good repair and proper repair without cost or expense to the Trustee, unless and until it becomes worn out, unsuitable for use, lost, destroyed or taken or requisitioned by condemnation or otherwise. Whenever any of the Trust Equipment shall become worn out, unsuitable for use, lost, destroyed or taken or requisitioned by condemnation or otherwise, the Company shall, at its option:

(1) Forthwith deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the fair value thereof as of the date such Trust Equipment became worn out, unsuitable for use, lost, destroyed or taken or requisitioned by condemnation or otherwise, and shall deposit with the

Trustee an amount in cash equal to such fair value (as determined in subparagraph (1) of the fifth paragraph of Section 5.06). Cash deposited with the Trustee pursuant to this subparagraph (1) of this first paragraph of Section 5.08 shall be held and applied as provided for in the fourth paragraph of Section 5.06; or

(2) Forthwith deliver to the Trustee an Officer's Certificate describing such Trust Equipment and stating the depreciated value thereof (as computed on a reproduction cost basis in accordance with the regulations of the Association of American Railroads then in effect) as of the date such Trust Equipment became worn out, unsuitable for use, lost, destroyed or taken or requisitioned by condemnation or otherwise, and shall deposit with the Trustee an amount in cash equal to such depreciated value. payment for such Trust Equipment is to be made to the Company by a third party and except as is otherwise provided herein, the Company shall not be required to deposit with the Trustee the depreciated value until such payment is received by the Company. The Company agrees to make all reasonable efforts to obtain payment from such third party at the earliest possible date. Anything contained herein to the contrary notwithstanding: (i) the amounts deposited with the Trustee pursuant to this subparagraph (2) shall be treated in the same manner as rental paid to the Trustee pursuant to Section 5.04(b)(5) and, at the next succeeding Principal Payment Date, shall be applied pursuant to Sections 3.02 and 3.03 to prepay a principal amount of the Trust Certificates equal to such depreciated value; and (ii) such deposits and prepayments called for by this subparagraph (2) shall be in addition to the principal payment provisions set forth in Article Three and Section 5.04(b)(5). Until applied to prepay a portion of the Trust Certificates as provided herein, amounts deposited pursuant to this subparagraph (2) shall be invested by the Trustee, on Request, in Investment Securities in accordance with Section 9.05. Actions by the Company in complying with the provisions of this subparagraph (2) shall relieve the Company of any further obligation to replace such Trust Equipment or to deposit cash in lieu thereof under subparagraph (1) of this first

paragraph of Section 5.08, provided, however, that in any event payment of the depreciated value pursuant to this subparagraph (2) shall be made by the Company no later than 180 days following the date of the Officer's Certificate delivered pursuant hereto.

The rights and remedies of the Trustee to enforce or to recover any of the rental payments shall not be affected by reason of any such occurrence as described above in this Section 5.08.

The Company covenants and agrees to furnish to the Trustee whenever required by the Trustee but at least once on or before May 31 in every calendar year following the calendar year in which occurs the first delivery of any of the Trust Equipment to the Trustee or its agent or agents hereunder and during the continuance of the lease provided for herein an Officer's Certificate, dated as of the preceding March 1 stating (1) the number of units of the Trust Equipment then covered hereby and under sublease, together with a list and description of sublessees thereunder, the units of Trust Equipment (identified by car number) covered by each sublease and the term and monthly rental under each sublease, (2) the amount, description and numbers of all Trust Equipment that may have become worn out, unsuitable for use, lost, destroyed or taken or requisitioned by condemnation or otherwise since the date of the last preceding statement (or the date of this Agreement in case of the first statement), (3) the number of units of the Trust Equipment which the Company has been notified are then undergoing repairs, other than running repairs, or then withdrawn from use for such repairs, (4) that in the case of all the Trust Equipment repainted or repaired since the date of the last preceding statement (or the date of this Agreement in the case of the first statement), the marks required by Section 5.07 have been preserved, or that such Trust Equipment when repainted or repaired has been again marked as required thereby, and (5) all normal maintenance and repair work on the Trust Equipment has been done and all such equipment is in good condition and repair and in proper running order. The Trustee, by its agents, shall have the right once in each calendar year, but shall be under no duty, to inspect the Trust Equipment at the then existing locations thereof.

Section 5.09. <u>Possession of Trust Equipment</u>. The Company simultaneously with the execution of this Agreement

shall deliver to the Trustee the Sublease substantially in the form of Exhibit B hereto, duly executed and delivered by the parties thereto, shall duly execute and deliver to the Trustee the Sublease Assignment substantially in the form of Exhibit C hereto and shall cause to be duly executed and delivered to the Trustee the consent of the Sublessee to assignment substantially in the form of the consent set forth at the foot of the Sublease Assignment. Except as provided in this Section 5.09, the Company will not assign or transfer its rights hereunder, or transfer or sublet the Trust Equipment or any part thereof or assign, pledge, mortgage, transfer or otherwise dispose of any rights under any sublease of any of the Trust Equipment, without the written consent of the Trustee first had and obtained; and the Company shall not, without such written consent, except as herein provided, part with the possession of, or suffer or allow to pass out of its possession or control, any of the Trust Equipment. An assignment or a transfer to a solvent corporation which shall acquire all or substantially all of the property of the Company and which, by execution of an appropriate instrument satisfactory to the Trustee, shall assume and agree to perform each and all of the obligations and covenants of the Company hereunder shall not be deemed to be a breach of this covenant.

So long as the Company shall not be in default under this Agreement, the Company and any of its Affiliates shall be entitled to the possession and use of the Trust Equipment in accordance with the terms hereof and to permit the use of the Trust Equipment by the Sublessee or by a railroad company or companies incorporated in the United States of America with which the Sublessee has contractual arrangements for the use of the Trust Equipment for its benefit upon trackage owned or operated by such railroad company or companies or over which such railroad company or companies have trackage or other operating rights or over which railroad equipment of such railroad company or companies is regularly operated pursuant to contract, and also to permit the use of the Trust Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions hereof and of the Sublease; provided, however, that the Company shall not assign, sublease or permit the assignment, sublease or use of any Trust Equipment predominantly outside the United States of America within the meaning of section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code) nor shall the Company assign or

sublease to, or permit the sublease or use of the Trust Equipment by, any person in whose hands such Trust Equipment would not qualify as "section 38 property" within the meaning of the Code; and provided further, however, that any such sublease shall forthwith be assigned to the Trustee as security for the obligations of the Company hereunder pursuant to an Assignment and that the Assignment of any such sublease containing an option permitting the sublessee to purchase any units of Trust Equipment shall also provide for the proceeds of any such sale to be assigned to the Trustee pursuant to the Assignment; provided, further, however, that any such sublease shall be to sublessees acceptable to the holders of not less than 65% in principal amount of Trust Certificates then outstanding.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession and use of the Trust Equipment covered thereby, subject to the rights and remedies of the Trustee in respect of the Trust Equipment covered by such sublease upon the occurrence of an Event of Default, and, subject to the provisions of Section 5.07, may provide for lettering and marking upon such Equipment for convenience of identification of the leasehold interest of such sublessee therein.

The Trustee shall have the right to declare the lease provided for herein terminated in case of any unauthorized assignment or transfer of the Company's rights hereunder or in case of any unauthorized transfer or sublease of any of the Trust Equipment. The election of the Trustee to terminate the lease provided for herein shall have the same effect as the retaking of the Trust Equipment by the Trustee as hereinafter provided.

Section 5.10. Indemnity. The Company shall pay or cause to be paid, and shall protect, indemnify and hold the Trustee, its successors, assigns, principals, agents and servants as third party beneficiaries hereof (hereinafter called Indemnified Persons) harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses (including without limitation reasonable attorneys' fees and expenses of any Indemnified

Person) relating thereto) in any way relating to or arising or alleged to arise out of this Agreement, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Trust Equipment or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Company; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Trust Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaption or maintenance of the Trust Equipment or of any other equipment in connection therewith (whether owned or under the control of the Trustee, the Company or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation (except by the Indemnified Person seeking indemnity hereunder) or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Trust Equipment or the leasing, subleasing, ownership, use, replacement, adaption or maintenance thereof; or (vii) any claim arising out of any of the Trustee's obligations under the Sublease Assignment or an Assignment, except to the extent such claim arises from the gross negligence or willful misconduct of the In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Company, upon such Indemnified Person's reasonable request, will at the Company's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Company and approved by such Indemnified Person, as the case may be, and, in the event of any failure by the Company to do so, the Company shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. The Company and the Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this

Section 5.10 by the Company, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Company shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given.

The Company further agrees to indemnify, protect and hold harmless the Trustee from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Trustee, because of the use in or about the construction or operation of any of the Trust Equipment which infringes or is claimed to infringe on any patent or other right.

The indemnities contained in this Section 5.10 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other ciurcumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Section 5.10 shall be deemed to create any rights of subrogation in any insurer or third party against the Company or the Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise. Company covenants and agrees to comply in all respects with the laws of the United States of America and of all the states and other jurisdictions in which the Trust Equipment or any thereof may be operated and with all lawful acts, rules, regulations and orders of any commissions, boards or other legislative, executive, administrative or judicial bodies or officers having power to regulate or supervise any of the Trust Equipment, including without limitation all lawful acts, rules, regulations and orders of any body having competent jurisdiction relating to automatic coupler devices or attachments, air brakes or other appliances; provided, however, that the Company may in good faith contest the validity of any such law, act, rule, regulation or order, or the application thereof to the Trust Equipment or any part thereof, in any reasonable manner which will not in the judgment of the Trustee materially endanger the rights or interests of the Trustee or the holders of the Trust Certificates. The Company shall not be relieved from any of its obligations hereunder by reason of the assertion or enforcement of any such claims

or the commencement or prosecution of any litigation in respect thereof.

ARTICLE SIX

Remedies in Event of Default

Section 6.01. Events of Default. The Company covenants and agrees that in case:

- (a) The Company shall default in the payment of any part of the rental payable hereunder for more than ten (10) days after the same shall have become due and payable, or
- (b) The Company shall make or suffer any unauthorized assignment or transfer of its rights hereunder or any unauthorized transfer or sublease (including contracts to make any such assignment, transfer or sublease) of the Trust Equipment, or, except as herein authorized, shall part with the possession of any of the Trust Equipment and shall fail or refuse to cause such assignment or transfer or sublease to be cancelled by agreement of all parties having any interest therein and recover possession of such Trust Equipment within 30 days after the Trustee shall have demanded in writing such cancellation and recovery of possession, or within said 30 days to deposit with the Trustee in accordance with Section 5.06, a sum in cash equal to the fair value (determined under subparagraph (1) of the fifth paragraph of Section 5.06) of the Trust Equipment so assigned or transferred or subleased or the possession of which shall have been parted with otherwise than herein authorized (any sum so deposited to be returned to the Company upon the cancellation of such assignment, transfer or sublease and the recovery of possession by the Company of such Trust Equipment), or

- (c) The Company shall, for more than 30 days after the Trustee shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and covenants hereof or of the Purchase Agreement on its part to be kept and performed, or to make provision satisfactory to the Trustee for such compliance, or
- (d) An event of default shall occur under any lease, agreement, equipment trust agreement or indenture under which the Company is an obligor (the term "event of default" being used in this subparagraph (d) to mean any event which permit,s, or after any applicable notice and/or period of grace provided for in the instrument in question would permit, the Trustee thereunder to declare the principal amount of the obligation issued or secured thereby to become immediately due and payable), or
- (e) The lease provided for herein shall be terminated by operation of law, or
- (f) Any proceedings shall be commenced by or against the Company or the Sublessee or a guarantor of the Sublease for any relief which includes, or might result in, any modification of the obligations of the Company hereunder or under the guarantee endorsed on the Trust Certificates, any modification of the obligations of the Sublessee or a guarantor of the Sublease under the Sublease, or any modification of the obligations of the Company, the Sublessee or a guarantor of the Sublease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such proceeding shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company under this Agreement, under the quarantee endorsed on the Trust Certificates and under any instrument made in connection with the purchase of the Trust Certificates by the initial holders thereof, and all

the obligations of the Sublessee and of a guarantor of the Sublease under the Sublease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company, the Sublessee or a guarantor of the Sublease, as the case may be, or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier,

then in any such case (herein sometimes called an Event of Default), the Trustee, by notice in writing to the Company, or the holders of not less than 65% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and to the Trustee, may declare to be due and payable forthwith the entire amount of the rentals (not including rentals required for the payment of interest accruing after the date of such declaration) payable by the Company as set forth in Section 5.04 and not theretofore paid. Thereupon the entire amount of such rentals shall forthwith become and shall be due and payable immediately without further demand, together with interest at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the outstanding Trust Certificates to the extent legally enforceable, on any portion thereof overdue; and the Trustee shall be entitled to judgment for the total amount so becoming payable by the Company, together with interest thereon, at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the outstanding Trust Certificate to the extent legally enforceable, and to collect such judgment out of any property of the Company wherever situated.

In addition, in case one or more Events of Default shall happen, the Trustee, by notice in writing to the Company, or the holders of not less than 65% in principal amount of the then outstanding Trust Certificates, by notice in writing to the Company and the Trustee, may declare the principal of all the Trust Certificates then outstanding to be due and payable, and thereupon the same shall become and be immediately due and payable.

In case the Company shall fail to pay any installment of rental payable pursuant to Section 5.04(b)(4), (b)(5) or (b)(6) when and as the same shall become due and payable hereunder, and such default shall have continued for a period of 10 days, the Trustee, in its own name and as Trustee of an express trust, shall be entitled and empowered to institute any action or proceedings at law or in equity for the collection of the rentals so due and unpaid, and may prosecute any such action or proceedings to judgment or final decree, and may enforce any such judgment or final decree against the Company or other obligor upon the Trust Certificates and collect in the manner provided by law out of the property of the Company or other obligor upon the Trust Certificates wherever situated the monies adjudged or decreed to be payable.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor upon the Trust Certificates under the Bankruptcy Act or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in case of any other judicial proceedings relative to the Company or such other obligor, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the rental payments hereunder or the principal of the Trust Certificates shall then be due and payable as herein or therein expressed whether by declaration or otherwise and irrespective of whether the Trustee shall have made any demand or declaration pursuant to the provisions of this Section 6.01, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the entire amount of the rentals (including any unpaid rental then due but not including rentals required for the payment of interest accruing after the date of such declaration) and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for reasonable compensation to the Trustee, its agents, attorneys and counsel, and for reimbursement of all expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or willful misconduct) and of the holders of the Trust Certificates allowed in such proceedings and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute all amounts

received with respect to the claims of the holders of the Trust Certificates and of the Trustee on their behalf; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the holders of the Trust Certificates to make payment to the Trustee, and, in the event that the Trustee shall consent to the making of payments directly to the holders of the Trust Certificates, to pay to the Trustee such amounts as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred, and all advances made, by the Trustee except as a result of its gross negligence or willful misconduct.

All rights of action and to assert claims under this Agreement, or under any of the Trust Certificates, may be enforced by the Trustee without the possession of any of the Trust Certificates or the production thereof on any trial or other proceedings relative thereto, and any such action or proceedings instituted by the Trustee shall be brought in its own name as trustee of any express trust; and any recovery of judgment shall be for the ratable benefit of the holders of the Trust Certificates. In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Agreement to which the Trustee shall be a party) the Trustee shall be held to represent all the holders of the Trust Certificates, and it shall not be necessary to make any holders of the Trust Certificates parties to such proceedings.

Section 6.02. Remedies. The Trustee by its agents (a) may enter upon the premises of the Company and of any Affiliate of the Company or of any sublessee or any other premises where any of the Trust Equipment may be and take possession of all or any part of the Trust Equipment and withdraw the same from said premises, retaining all payment which up to that time may have been made on account of rental for the Trust Equipment and otherwise, (b) shall be entitled to collect, receive and retain all per diem, mileage, sublease rentals or other charges of any kind then due on account of or thereafter earned by the Trust Equipment or any part thereof, and (c) may lease the Trust Equipment or any part thereof, or with or without retaking possession thereof (but only after declaring due and payable the entire amount of rentals payable by the Company as provided in Section 6.01 hereof) may sell the same or any part thereof, free from any and all claims of the Company at law or in equity, in one lot

and as an entirety or in separate lots, insofar as may be necessary to perform and fulfill the trust hereunder, at public or private sale, for cash or upon credit, in its discretion, and may proceed otherwise to enforce its rights and the rights of the holders of interests hereunder in the manner herein provided. Upon any such sale, the Trustee itself may bid for the property offered for sale or any part thereof. Any such sale may be held or conducted at such place and at such time as the Trustee may specify, or as may be required by law, and without gathering at the place of sale the Trust Equipment to be sold, and in general in such manner as the Trustee may determine, but so that the Company may and shall have a reasonable opportunity to bid at any such sale. Upon such taking possession or withdrawal or lease or sale of the Trust Equipment, the Company shall cease to have any rights or remedies in respect of the Trust Equipment hereunder, but all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by the Company, and no payments theretofore made by the Company for the rent or use of the Trust Equipment or any of it shall, in case of the happening of any Event of Default and such taking possession, withdrawal, lease or sale by the Trustee, give to the Company any legal or equitable interest or title in or to the Trust Equipment or any of it or any cause or right of action at law or in equity in respect of the Trust Equipment against the Trustee or the holders of interests hereunder. No such taking possession, withdrawal, lease or sale of the Trust Equipment by the Trustee shall be a bar to the recovery by the Trustee from the Company of rentals then or thereafter due and payable, and the Company shall be and remain liable for the same until such sums shall have been realized as, with the proceeds of the lease or sale of the Trust Equipment, shall be sufficient for the discharge and payment in full of the items mentioned in Section 5.04 (other than interest not then accrued), whether or not they shall have then matured.

Section 6.03. Application of Proceeds. If, in case of the happening of any Event of Default, the Trustee shall exercise any of the powers conferred upon it by Sections 6.01 and 6.02, all payments made by the Company to the Trustee hereunder after such Event of Default, and the proceeds of any judgment collected from the Company by the Trustee hereunder, and the proceeds of every sale or lease by the Trustee hereunder of any of the Trust Equipment, together with any other sums and Investment Securities which may then be held by the Trustee under any of the provisions hereof (other than

sums held in trust for the payment of specific Trust Certificates), shall be applied by the Trustee to the payment, in the following order of priority: (a) of all proper charges, expenses or advances made or incurred by the Trustee in accordance with the provisions of this Agreement and (b) of the interest then due, with interest on overdue interest at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the outstanding Trust Certificates to the extent legally enforceable, and of the principal of all the outstanding Trust Certificates, with interest thereon at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the outstanding Trust Certificates to the extent legally enforceable from the last preceding Interest Payment Date, whether such Trust Certificates shall have then matured by their term or not, all such payments to be in full if such proceeds shall be sufficient, and if not sufficient, then pro rata without preference between principal and interest.

After all such payments shall have been made in full, the title to any of the Trust Equipment remaining unsold shall be conveyed by the Trustee to the Company, free from any further liabilities or obligations to the Trustee hereunder. If after applying all such sums of money realized by the Trustee there shall remain any amount due to the Trustee under the provisions hereof, the Company agrees to pay the amount of such deficit to the Trustee. If after applying all such sums of money realized by the Trustee there shall remain a surplus in the possession of the Trustee, such surplus shall be paid to the Company.

Section 6.04. Waivers of Default. Prior to the declaration of the acceleration of the maturity of the rentals and of the maturity of all the Trust Certificates as provided in Section 6.01, the holders of at least 65% in aggregate principal amount of the Trust Certificates at the time outstanding may on behalf of the holders of all the Trust Certificates waive any past Event of Default and its consequences, except an Event of Default in the payment of any installment of rental payable pursuant to Section 5.04(b)(4), (b)(5), or (b)(6), but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

If at any time after the principal of all the Trust Certificates shall have been declared and become due and

payable or if at any time after the entire amount of rentals shall have been declared and become due and payable, all as provided in Section 6.01, but before December 31, 1989, all arrears or rent (with interest at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the outstanding Trust Certificates upon any overdue installments to the extent legally enforceable), the expenses and reasonable compensation of the Trustee, together with all expenses of the Trust occasioned by the Company's default, and all other sums which shall have become due and payable by the Company hereunder (other than the principal of Trust Certificates, and any other rental installments, which shall not at the time have matured according to their terms) shall be paid by the Company before any sale or lease by the Trustee of any of the Trust Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Trustee, or provision deemed by the Trustee to be adequate shall be made therefor, then, and in every such case, the Trustee, if so requested by the holders of at least 65% in principal amount of the Trust Certificate then outstanding, shall by written notice to the Company waive the default by reason of which there shall have been such declaration or declarations and the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Remedies. No retaking of possession of the Trust Equipment by the Trustee, or any withdrawal, lease or sale thereof, nor any action or failure or omission to act against the Company or in respect of the Trust Equipment, on the part of the Trustee or on the part of the holder of any Trust Certificate, nor any delay or indulgence granted to the Company by the Trustee or by any such holder, shall affect the obligations of the Company hereunder. The Company hereby waives presentation and demand in respect of any of the Trust Certificates and waives notice of presentation, of demand and and of any default in the payment of the principal of and interest on the Trust Certificates.

Section 6.06. Company to Deliver Trust Equipment to Trustee. In case the Trustee shall rightfully demand possession of any of the Trust Equipment in pursuance of this Agreement, the Company will, at its own expense, forthwith promptly cause such Trust Equipment to be drawn to such point

or points as shall reasonably be designated by the Trustee and will there deliver or cause to be delivered the same to the Trustee; or, at the option of the Trustee, the Trustee may keep such Trust Equipment, at the expense of the Company, on any lines of railroad or premises approved by the Trustee until the Trustee shall have leased, sold or otherwise disposed of the same. It is hereby expressly covenanted and agreed that the performance of the foregoing covenant is of the essence of this Agreement and upon application to any court having jurisdiction in the premises, the Trustee shall be entitled to a decree against the Company requiring the specific performance thereof.

Trustee shall endeavor to keep the holders of the Trust Certificates advised of each default hereunder known to the Trustee, unless such default shall have been remedied or cured before the giving of any notice. The term "default" as used in this Section 6.07 shall mean the happening of any event defined as an Event of Default in Section 6.01, except that, for the purposes of this Section 6.07 only, there shall be eliminated from the definition of any such event as specified in Section 6.01 any reference to the making of a written demand or the continuance, or the continuance in force, for any period of days of a default or failure on the part of the Company referred to in such definition.

Section 6.08. Unconditional Right of Holders of Trust Certificates to Sue for Principal and Interest. Notwithstanding any other provisions in this Agreement, the right of any holder of any Trust Certificate to receive payment of the principal of and interest on such Trust Certificate, on or after the respective due dates expressed in such Trust Certificate, or to institute suit for the enforcement of any such payment on or after such respective dates, shall not be impaired or affected without the consent of such holder, except no such suit shall be instituted if and to the extent that the institution or prosecution thereof or the entry of judgment therein would, under applicable law, result in the surrender, impairment, waiver or loss of the title reserved under this Agreement upon any property subject hereto.

Section 6.09. Control by Holders of Trust
Certificates. The holders of at least 65% in aggregate
principal amount of the Trust Certificates at the time

outstanding shall have the right to direct the time, method, and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee; provided, however, that such direction shall not be otherwise then in accordance with law and the provisions of this Agreement; and the Trustee, subject to the provisions of Section 9.02, shall have the right to decline to follow any such direction if the Trustee, being advised by counsel, shall determine that the proceeding so directed may not lawfully be taken, or if the Trustee in good faith shall, by a Responsible Officer or Officers of the Trustee, determine that the proceeding so directed would involve it in a personal liability, or if the Trustee in good faith should determine that the action so directed would be unjustly prejudicial to the holders of the Trust Certificates not taking part in such direction; and provided further, that nothing in this Agreement contained shall impair the right of the Trustee in its discretion to take any action deemed proper by the Trustee and which is not inconsistent with such direction by the holders of the Trust Certificates.

Section 6.10. Remedies Cumulative. The remedies in this Agreement provided in favor of the Trustee and the holders of the Trust Certificates, or any of them, shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity.

ARTICLE SEVEN

Additional Covenants and Agreements by the Company

Section 7.01. Discharge of Liens. The Company covenants and agrees that it will pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any debt, tax, charge, assessment, obligation or claim which if unpaid might become a lien or charge upon or against any of the Trust Equipment, but this provision shall not require the payment of any such debt, tax, charge, assessment, obligation or claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings, provided that such contest will not materially endanger the rights or interests of the Trustee or of the holders of the Trust Certificates and the Company shall have furnished the Trustee with an Opinion of Counsel

to such effect. If the Company does not forthwith pay and discharge, or cause to be paid and discharged, or make adequate provision for the satisfaction or discharge of, any such debt, tax, charge, assessment, obligation or claim as required by this Section 7.01, the Trustee may, but shall not be obligated to, pay and discharge the same and any amounts so paid shall be secured by and under this Agreement until reimbursed by the Company.

Section 7.02. Payment of Expenses; Recording. Company covenants and agrees to pay the expenses incident to the preparation and execution of this Agreement and the Trust Certificates to be issued hereunder, or connected with the preparation, execution, recording and filing hereof and of any instruments executed under the provisions hereof with respect to the Trust Equipment. The Company will, promptly after the execution and delivery of this Agreement and of each Assignment and each supplement or amendment hereto or thereto, respectively, cause the same to be duly filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303. The Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Trustee for the purposes of proper protection of the title of the Trustee and the rights of the holders of the Trust Certificates and of fully carrying out and effectuating this Agreement and the intent hereof.

Promptly after the execution and delivery of this Agreement, the Sublease Assignment and of each Assignment and each supplement or amendment hereto or thereto, the Company will furnish to the Trustee an Opinion of Counsel stating that, in the opinion of such counsel, such document has been duly authorized, executed and delivered by the Company and constitutes, insofar as the Company is concerned, a legal, valid and binding obligation, and (with respect to the Sublease Assignment and each Assignment and each supplement or amendment thereto) the Trustee is vested with all the right, title and interest of the Company in and to such document purported to be assigned to the Trustee by such document; and the Company shall furnish to the Trustee, when requested by the Trustee, an Opinion of Counsel stating that, in the opinion of such counsel, (i) such action has been taken with respect to the recording, filing, rerecording and refiling of this Agreement and of each Assignment and each

supplement or amendment hereto or thereto as is necessary for the proper protection of the title of the Trustee to the Trust Equipment and the rights of the Trustee and holders of the Trust Certificates hereunder and thereunder and (ii) reciting the details of such action or referring to prior opinions delivered pursuant to this Section 7.02 which recite such details of such action.

Section 7.03. Further Assurances. The Company covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as it shall be reasonably requested by the Trustee to do or execute for the purpose of fully carrying out and effectuating this Agreement and the intent hereof.

Section 7.04. Merger or Consolidation. The Company covenants and agrees that in the eventuality that it should merge or consolidate with, or transfer all or substantially all of its assets to, another partnership or a corporation, the survivor of such merger or consolidation or such transferee shall be a solvent partnership or corporation organized under the laws of the United States of America or a state thereof or the District of Columbia and such survivor (if not the Company) or transferee shall assume all the obligations and liabilities of the Company hereunder.

Section 7.05. Insurance. The Company will, at all times prior to the return of the Trust Equipment to the Trustee in accordance with the terms hereof, maintain or cause to be maintained, at its own expense, property and casualty insurance in respect of the Trust Equipment at the time subject hereto, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Sublessee or any other sublessee permitted hereunder on similar equipment owned by it; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than \$10.000,000 with a deductible of not greater than \$50,000) per occurrence. The proceeds of such insurance shall be payable to the Trustee, the Company, the Sublessee and any other sublessee permitted hereunder as their respective interests may appear.

The Company will, at all times prior to the return of the Trust Equipment to the Trustee in accordance with the

terms hereof, at its own expense, carry and maintain or cause to be carried and maintained public liability insurance, naming the Trustee as an additional named insured, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Sublessee or any other sublessee permitted hereunder in respect of similar equipment owned by it; provided, however, that, subject to availability, the amount of such coverage shall not, at any time, be less than \$10,000,000 (with a deductible of not greater than \$50,000) per occurrence; provided, further, in the case of any other such sublessee, the form of insurance, amounts of coverage, risks insured against and underwriters shall be subject to the prior approval of the Trustee which approval shall not be unreasonably withheld. Any policy of insurance carried in accordance with this section shall not provide for any payment of premiums or commissions by the Trustee.

The Company shall obtain from each insurer under the two paragraphs immediately above an agreement, by endorsement or separate instrument, that such insurer will give the Trustee 30 days' written notice before such insurer's policy shall be materially altered or canceled or not renewed. On or prior to the delivery and acceptance of any Trust Equipment hereunder, and in January of each year, the Company shall deliver to the Trustee a certificate of insurance by or on behalf of each insurer stating the coverage, named insureds and limits of each such policy.

Section 7.06. Guaranty of Company. The Company covenants, agrees and guarantees that the holder of each of the Trust Certificates shall receive the principal amount thereof, in such coin or currency of the United States of America, as at the time of payment shall be legal tender for the payment of public and private debts, when and as the same shall become due and payable, in accordance with the provisions thereof or of this Agreement (and if not so paid, with interest thereon paid at the rate of one percent (1%) per annum in excess of the applicable interest rate provided in the outstanding Trust Certificates to the extent legally enforceable), and shall receive interest thereon in like money at the rate specified therein, at the times and place and otherwise as expressed in the Trust Certificate and this Agreement (and if not so paid, with interest thereon until paid at the rate of one percent (1%) per annum in excess of

the applicable interest rate provided in the outstanding Trust Certificates to the extent legally enforceable), and the Company agrees to endorse upon each of the Trust Certificates, and to cause each of its general partners to endorse upon each of the Trust Certificates, at or before the issuance and delivery thereof by the Trustee, its guaranty of the prompt payment of the principal thereof and the interest thereon, in substantially the form herein set forth. Said guaranty so endorsed by the Company shall be signed in the name and on behalf of the Company by the manual signature of its duly authorized general partner. In case any person whose signature shall appear on such guaranty shall cease to be such partner before the Trust Certificates shall have been issued and delivered by the Trustee, or shall not have been acting in such capacity on the date of the Trust Certificates, such quaranty shall nevertheless be as effective and binding upon the Company as though the person who signed such quaranty had not ceased to be or had then been such partner.

ARTICLE EIGHT

Concerning the Holders of Trust Certificates

Section 8.01. Evidence of Action Taken by Holders of Trust Certificates. Whenever in this Agreement it is provided that the holders of a specified percentage in aggregate principal amount of the Trust Certificates may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action the holders of such specified percentage have joined therein may be evidenced by any instrument or any number of instruments of similar tenor executed by holders of Trust Certificates in person or by agent or proxy appointed in writing.

Section 8.02. Proof of Execution of Instruments and of Holding of Trust Certificates. Subject to the provisions of Section 9.02, proof of the execution of any instrument by a holder of Trust Certificates or his agent or proxy and proof of the holding by any person of any of the Trust Certificates shall be sufficient if made in the following manner:

The fact and date of the execution by any such person of any instrument may be proved by the certificate of any notary public or other officer of any jurisdiction within the

United States of America authorized to take acknowledgements of deeds to be recorded in such jurisdiction that the person executing such instrument acknowledged to him the execution thereof, by an affidavit of a witness to such execution sworn to before any such notary or other such officer, or by a guarantee of the signature of such person by a trust company, a bank or a member firm of the New York Stock Exchange.

The ownership of Trust Certificates may be proved by the register of such Trust Certificates or by a Certificate of the registar thereof.

The Trustee may require such additional proof of any matter referred to in this Section 8.02 as it shall deem necessary.

Section 8.03. Trust Certificates Owned by Company Deemed Not Outstanding. In determining whether the holders of the requisite principal amount of the Trust Certificates have concurred in any direction, request or consent under this Agreement, Trust Certificates which are owned by the Company or by any other obligor on the Trust Certificates or by an Affiliate of the Company or any such other obligor shall be disregarded, except that for the purpose of determining whether the Trustee shall be protected in relying on any such direction, request or consent, only Trust Certificates which the Trustee knows are so owned shall be disregarded.

Section 8.04. Right of Revocation of Action Taken. At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the holders of the percentage in aggregate principal amount of the Trust Certificate specified in this Agreement in connection with such action any holder of a Trust Certificate the serial number of which is shown by the evidence to be included in the Trust Certificates the holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Trust Certificate. Except as aforesaid, any such action taken by the holder of any Trust Certificate shall be conclusive and binding upon such holder and upon all future holders and owners of such Trust Certificates and of any Trust Certificate issued in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon such Trust

Certificate. Any action taken by the holders of the percentage in aggregate principal amount of the Trust Certificates specified in this Agreement in connection with such action shall be conclusive and binding upon the Company, the Trustee and the holders of all the Trust Certificates.

ARTICLE NINE

The Trustee

Section 9.01. Acceptance of Trusts. The Trustee hereby accepts the Trust imposed upon it by this Agreement, and agrees to perform the same as herein expressed.

Section 9.02. Duties and Responsibilities of the Trustee; During Default; Prior to Default. In case an Event of Default has occurred (which has not been cured), the Trustee shall exercise such of the rights and powers vested in it by this Agreement, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

No provision of this Agreement shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that

- (a) prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred:
 - (1) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Agreement, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Agreement, and no implied covenants or obligations shall be read into this Agreement against the Trustee; and
 - (2) in the absence of willful misconduct on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming

to the requirements of this Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Agreement;

- (b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and
- (c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the holders of at least 65% in aggregate principal amount of the Trust Certificates at the time outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Agreement.

3

None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers, if there is reasonable ground for believing that the repayment of such funds of adequate indemnity against such risk or liability is not reasonably assured to it.

Section 9.03. Certain Rights of the Trustee.

(a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, trust certificate, guaranty or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) the Trustee may consult with counsel, and any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or suffered by it hereunder in good faith and in accordance with such Opinion of Counsel;

7

)

- (c) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Agreement at the request, order or direction of any of the holders of the Trust Certificates, pursuant to the provisions of this Agreement, unless such holders shall have offered to the Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred thereon or thereby; and
- (d) the Trustee shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement.

Section 9.04. Application of Rentals; Responsibility of Trustee to Insure or Record. The Trustee covenants and agrees to apply the rentals received by it under Section 5.04(b) when and as the same shall be received, and to the extent that such rentals shall be sufficient therefor, for the purposes specified in said Section 5.04(b).

The Trustee shall not be required to undertake any act or duty in the way of insuring, taking care of or taking possession of the Trust Equipment or to undertake any other act or duty under this Agreement until fully indemnified by the Company or by one or more of the holders of the Trust Certificates against all liability and expense; and, except as aforesaid, the Trustee shall not be responsible for the filing or recording or refiling or rerecording of this Agreement or of any supplement hereto or statement of new numbers.

Section 9.05. Funds May be Held by Trustee;
Investments in Investment Securities. Any money at any time paid to or held by the Trustee hereunder until paid out by the Trustees as herein provided may be carried by the Trustee on deposit with itself, and, if and to the extent permitted by applicable law or regulations of governmental authorities having jurisdiction over the Trustee, the Trustee may allow interest upon any such monies held by it in trust at the rate

generally prevailing among Louisville, Kentucky banks and trust companies or allowed by it upon deposits of a similar character.

At any time, and from time to time, if at the time no Event of Default shall have occurred and be continuing, the Trustee, on Request, shall invest and reinvest Deposited Cash held by it or cash deposited with it pursuant to Section 5.06 or Section 5.08 (hereinafter in this Section 9.05 called Replacement Funds) in Investment Securities, at such prices including any premium and accrued interest, as are set forth in such Request, such Investment Securities to be held by the Trustee in trust for the benefit of the holders of the Trust Certificates.

The Trustee shall, on Request, or the Trustee may, in the event funds are required for payment against delivery of Trust Equipment, sell such Investment Securities, or any portion thereof, and restore to Deposited Cash or Replacement Funds, as the case may be, the proceeds of any such sale up to the amount paid for such Investment Securities, including premium and accrued interest.

The Trustee shall restore to Deposited Cash or Replacement Funds, as the case may be, rent received by it for that purpose under the provisions of Section 5.04(b)(2)(b).

The Company, if not to the knowledge of the Trustee in default under the terms hereof, shall be entitled to receive any interest allowed as provided in the first paragraph of this Section 9.05, or any interest paid by any bank or bankers on deposits to the credit of the Trustee with such bank or bankers pursuant to Section 2.01, and any interest (in excess of accrued interest paid from Deposited Cash at the time of purchase) or other profit which may be realized from any sale or redemption of Investment Securities.

Section 9.06. Trustee Not Liable for Delivery Delays or Defects in Equipment or Title; May Perform Duties by Agents; Reimbursement of Expenses; Holding of Trust Certificates; Monies Held in Trust. The Trustee shall not be liable to anyone for any delay in the delivery of any of the Trust Equipment, or for any default on the part of the manufacturers or owners thereof or of the Company, or for any defect in any of the Trust Equipment or in the title thereto, nor shall anything herein be construed as a warranty on the

part of the Trustee in respect thereof or as a representation on the part of the Trustee in respect of the value thereof or in respect of the title thereto.

The Trustee may perform its powers and duties hereunder by or through such attorneys, agents and servants as it shall appoint, and shall be answerable for only its own acts, negligence and willful defaults, and not for the default or misconduct of any attorney, agent or servant appointed by it with reasonable care. The Trustee shall not be responsible in any way for the recitals herein contained or for the execution or validity of this Agreement or of the Trust Certificates (except for its own execution thereof).

The Trustee shall be entitled to receive payment of all of its expenses and disbursements hereunder, including reasonable counsel fees, and to receive reasonable compensation for all services rendered by it in the execution of the trust hereby created, all of which shall be paid by the Company.

The Trustee in its individual or fiduciary capacity may own, hold and dispose of Trust Certificates with the same rights which it would have if it were not Trustee.

Any monies at any time held by the Trustee or any paying agent hereunder shall, until paid out or invested by the Trustee or any paying agent as herein provided, be held by it in trust as herein provided for the benefit of the holders of the Trust Certificates.

Trustee. There shall at all times be a Trustee hereunder which shall be either Citizens Fidelity Bank & Trust Company or a corporation organized and doing business under the laws of the United States of America or of the States of Illinois, Kentucky, Tennessee or Virginia having a combined capital and surplus of at least \$25,000,000 and which is authorized under such laws to exercise corporate trust powers and is subject to supervision or examination by federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 9.07, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of

condition so published. In case at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section 9.07, the Trustee shall resign immediately in the manner and with the effect specified in Section 9.08.

Section 9.08. Resignation and Removal; Appointment of Successor Trustee. (a) The Trustee may at any time resign by giving written notice of resignation to the Company and by mailing notice of resignation to all holders of Trust Certificates at their last addresses appearing on the registry books. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, one copy of which instrument shall be delivered to the Trustee so resigning and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the giving of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any holder of a Trust Certificate who has been a bona fide holder of a Trust Certificate or Trust Certificates for at least six months may, on behalf of himself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following
shall occur:

- (1) the Trustee shall cease to be eligible in accordance with the provisions of Section 9.07 and shall fail to resign after written request therefor by the Company or by any such holder of a Trust Certificate, or
- (2) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in any such case, the Company may remove the Trustee and appoint a successor trustee by written instrument, in

duplicate, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, any holder of a Trust Certificate who has been a bona fide holder of a Trust Certificate or Trust Certificates for at least six months, may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

- (c) The holders of at least 65% in aggregate principal amount of the Trust Certificates at the time outstanding may at any time remove the Trustee and appoint a successor trustee by delivering to the Trustee to be removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 8.01 of the action taken by the holders of the Trust Certificates.
- (d) Any resignation or removal of the Trustee and any appointment of a successor trustee pursuant to any of the provisions of this Section 9.08 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 9.09.

Section 9.09. Acceptance of Appointment by Successor Trustee. Any successor trustee appointed as provided in Section 9.08 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effect and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its precedessor hereunder; but, nevertheless, on the written request of the Company or of the successor trustee, upon payment of its charges, then unpaid, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee all the rights and powers of the Trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee to secure any amounts then due it pursuant to the provisions of Section 9.06.

No successor trustee shall accept appointment as provided in this Section 9.09 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 9.07.

Upon acceptance of appointment by a successor trustee as provided in this Section 9.09, the Company shall mail notice of the succession of such trustee hereunder to the holders of Trust Certificates at their last addresses appearing upon the registry books. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 9.10. Merger or Consolidation of Trustee. Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger or conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be eligible under the provisions of Section 9.07, without the execution or filing of any paper or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

ARTICLE TEN

Miscellaneous

3

Section 10.01. Rights Confined to Parties and Holders. Nothing expressed or implied herein is intended or shall be construed to confer upon or to give to any person, firm or corporation, other than the parties hereto and the holders of the Trust Certificates, any right, remedy or claim under or by reason of this Agreement or of any term, covenant or condition hereof, and all the terms, covenants, conditions, promises and agreements contained herein shall be for the sole and exclusive benefit of the parties hereto and their successors and of the holders of the Trust Certificates.

Section 10.02. No Recourse. No recourse against any general partner of the Company, severally as such, under any

obligation, covenant or agreement of this Agreement shall be had, and no personal liability of any general partner of the Company, severally as such, for any obligation, covenant or agreement of this Agreement, either at common law or in equity or by statute or constitution, shall be incurred, in excess of the percentage thereof set forth below opposite his name:

B. Ray Thompson, Sr.	44.25%
B. Ray Thompson, Jr.	24.18%
Jesse J. Thompson	24.18%
Lindsay Young	7.39%

Section 10.03. Officer's Certificates and Opinions of Counsel; Statements to Be Contained Therein. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Agreement (other than the issuance of Trust Certificates), the Company shall furnish to the Trustee an Officer's Certificate stating that all conditions precedent provided for in this Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent have been complied with.

Each certificate or opinion provided for in this Agreement and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Agreement shall include (a) a statement that the person making such certificate or opinion has read such condition or covenant; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based; (c) a statement that, in the opinion of such person, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such condition or covenant has been complied with; and (d) a statement as to whether in the opinion of such person, such condition or covenant has been complied with.

Section 10.04. Binding Upon Assigns. Except as otherwise provided herein, the provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

Section 10.05. Notices. All demands, notices and communications hereunder shall be in writing and shall be

1

deemed to have been duly given if personally delivered at or mailed to (a) in the case of the Company, Oneida & Western Transportation Company, 300 Forest Park Boulevard, Knoxville, Tennessee 37919, Attention: B. Ray Thompson, Sr., or such other address as may hereafter be funished to the Trustee in writing by the Company and (b) in the case of the Trustee, Citizens Fidelity Bank & Trust Company, P.O. Box 33000, Louisville, Kentucky 40232, Attention: Corporate Trust Dept., or such other address as may hereafter be furnished to the Company in writing by Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.

Section 10.06. Effect of Headings. The Article and Section headings herein are for convenience only and shall not affect the construction hereof.

Section 10.07. <u>Counterparts</u>. This Agreement has been executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

Section 10.08. <u>Date Executed</u>. This Agreement shall be deemed to have been executed on the date of the acknowledgment thereof by the officer of the Trustee who signed it on behalf of the Trustee.

Section 10.09. Governing Law. The provisions of this Agreement, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the State of Kentucky, provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

Section 10.10. Amendment or Waiver. Any provision of this Agreement may be amended or waived with the written consent of the holders of not less than 65% of the aggregate unpaid principal amount of the Trust Certificates then outstanding; provided, however, that without the consent of the holders of 100% of the aggregate unpaid principal amount of the Trust Certificates then outstanding, no such amendment or waiver shall (1) reduce the amount of principal, change the amount or dates of payment of installments of principal or reduce the rate or extend the time of payment of interest with respect to the Trust Certificates without the consent of the

holders of each Trust Certificate so affected, (2) reduce the amount of or extend the time of payment of any rentals payable under this Agreement or release or provide for the release of any of the Trust Equipment or any other property or cash held by the Trustee in trust, otherwise than as expressly permitted by the present terms of this Agreement, or (3) reduce the percentage of the aggregate unpaid principal amount of Trust Certificates then outstanding, the holders of which are required to approve any amendment or to effect any waiver.

IN WITNESS WHEREOF, the Company has caused its name to be signed hereto by its duly authorized partners and the Trustee has caused its name to be signed hereto by its officer thereunto duly authorized as of the day and year first written.

CITIZENS FIDELITY BANK & TRUST COMPANY, TRUSTEE

Ву	
Title	

ONEIDA & WESTERN TRANSPORATION COMPANY

Partner

Partner

By loo Partner

By Xu my Jung.
Partner

THE COMMONWEALTH OF KENTUCKY COUNTY OF JEFFERSON On this ____ day of _____, 1979, before me ly appeared _____, to me personal personally appeared ______, to me personally known, who, being by me duly sworn says that he is a Trust Officer of Citizens Fidelity Bank & Trust Company, that said instrument was signed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank. Notary Public STATE OF COUNTY OF Knoy BEFORE ME, the undersigned authority, on this day personally appeared B. Ray Thompson, Sr., Partner of Oneida & Western Transportation Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said Company. GIVEN under my hand and seal of office this 260 day My commission expires Jan. 19, 1981 Norma G. Shiphard
Notary Public

STATE OF <u>Jennessee</u> \$		
COUNTY OF Knox S		
BEFORE ME, the undersigned authority, on this day personally appeared B. Ray Thompson, Jr., Partner of Oneida & Western Transportation Company, known to me to be the personance whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said Company.		
of July, 1979.		
My commission expires Jan. 19, 1981 Notary Public		
STATE OF <u>Jennessee</u> \$		
COUNTY OF Knox S		
personally appeared Jesse J. Thompson, Partner of Oneida & Western Trasportation Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said Company.		
GIVEN under my hand and seal of office this 24th day of, 1979.		
My commission expires Jan. 19, 1981 Notary Public		

STATE OF	Jennessee	S
COUNTY OF	Knox	S

BEFORE ME, the undersigned authority, on this day personally appeared Lindsay Young, Partner of Oneida & Western Transportation Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said Company.

GIVEN under my hand and seal of office this 26th day of July, 1979.

Norma G. Shephard Notary Public

My commission expires Jan. 19, 1981

- 66 -

EXHIBIT A

Description of Trust Equipment

Description	Manufacturer	Quantity	Company's Car Numbers (all inclusive)	AAR Mechanical Designation	Date of Earliest Service
105-Ton Rotary Dump Bathtub Type Gondola Care	Whittaker Corpor- ation, Berwick Forge and Pabri- cating Division, Berwick, PA.	154	OWTX99001- OWTX99154	GTS	June 1, 1979
105-Ton Rotary Dump Bathtub Type Gondola Cars	Whittaker Corporation, Berwick Forge and Fabricating Division, Berwick, PA	26			June 1, 1979
3000 hsp. Model SD40-2 Locomotives	General Motors Corporation, Electro-Motive Division, LaGrange, IL.	8			June 1, 1979
Steel Sheathed Bay Window Compact Body Cabooses	PACCAR, Inc., International Car Co., Division, Kenton, OH.	2			June 1, 1979

SUBLEASE OF RAILROAD EQUIPMENT
Dated as of, 1979
Between
ONEIDA & WESTERN TRANSPORTATION COMPANY
as Sublessor
And
SHAMROCK COAL COMPANY, INCORPORATED
AS Sublessee

THIS SUBLEASE OF RAILROAD EQUIPMENT, dated as of 1979, is made by and between ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership (hereinafter called the Sublessor) and SHAMROCK COAL COMPANY, INCORPORATED, a Tennessee corporation (hereinafter called the Sublessee).

WHEREAS, Citizens Fidelity Bank & Trust Company, a
Kentucky banking corporation, acting not in its individual
capacity but solely as Trustee (hereinafter called the
Trustee) under an Equipment Trust Agreement dated as of the
date hereof (hereinafter called the Trust Agreement) between
the Trustee and the Sublessor, has agreed to purchase and
take delivery from the Sublessor of the railroad equipment
described in Exhibit A hereto (hereinafter called the Equipment)
and to lease back to the Sublessor the Equipment on the
terms and conditions set forth in the Trust Agreement;

WHEREAS, the Sublessor desires to sublease the Equipment to the Sublessee at the rental payments and for the term and upon the terms and conditions hereinafter provided; and

WHEREAS, the Sublessor intends to assign certain of its rights under this Sublease to the Trustee pursuant to an Assignment of Sublease, dated as of the date hereof (hereinafter called the Sublease Assignment), and the Sublessee will consent to the Sublease Assignment pursuant to a Sublessee's Consent and Agreement (hereinafter called the Sublessee's Consent).

NOW, THEREFORE, in consideration of the rental to be paid and the covenants hereinafter mentioned to be kept and performed by the Sublessee, the Sublessor hereby leases the Equipment to the Sublessee upon the following terms and conditions:

Net Lease. This Sublease is a net Section 1. The Sublessee's obligation to pay all rental and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Sublessee shall not be entitled to any abatement of rental or any other amounts due The following factors, the list not meant to be hereunder. exclusive or to limit the generality of the foregoing, expressly will not entitle the Sublessee to any reduction of rent or other payments due under this Sublease: (i) abatements, reductions, counterclaims or setoffs due or alleged to be due by reason of any past, present or future claims of the Sublessee against the Sublessor, whether under this Sublease, or otherwise, including the Sublessee's rights by subrogation hereunder or thereunder against the Sublessor, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Equipment from whatsoever cause, (ii) any liens, encumbrances or

rights of others with respect to any of the Equipment, (iii) the prohibition of or other restriction against the Sublessee's use of all or any of the Equipment, (iv) the interference with such use by any person or entity, (v) the invalidity or unenforceability or lack of due authorization or approval of this Sublease, (vi) any present or future insolvency of or bankruptcy, reorganization or similar proceeding against the Sublessee, or (vii) any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding. It is the intention of the parties hereto that the rental and other amounts payable by the Sublessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Sublease. To the extent permitted by applicable law, the Sublessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Sublease except in accordance with the express terms hereof. Each rental or other payment made by the Sublessee hereunder shall be final and the Sublessee shall not seek to recover all or any part of such payment from the Sublessor or the Trustee for any reason whatsoever.

Section 2. Incorporation of Prime Lease. A true copy of the Trust Agreement is attached as Exhibit B hereto. Article One, Article Five, Article Six and Article Seven of the Trust Agreement are herein collectively called the Prime This Sublease is subject to and is made upon all of the terms, covenants and conditions of the Prime Lease, with the same force and effect as if fully set forth herein, except as otherwise provided herein. All the terms, covenants and conditions which the Sublessor is bound to comply with under the Prime Lease shall, except as otherwise provided herein, be binding upon the Sublessee hereunder; and all the rights and privileges of the Sublessor under the Prime Lease shall, except as otherwise provided herein, inure to the benefit of the Sublessee. It is the intention of the parties hereto that, except as otherwise provided in this Sublease, the relationship between the Sublessor and the Sublessee shall be governed by the terms of the various Articles and Sections of the Prime Lease (after substitution of the term "Sublessor" for the term "Trustee" (except in Section 5.04(b)(3), the last paragraph of Section 5.04, the legend set forth in Section 5.07, and second proviso of the second paragraph of Section 5.09), the term "Sublessee" for the term "Company" and the term "Sublease" for the term "Lease" or the term "Agreement," wherever the terms "Trustee," "Company," "Lease" and "Agreement" shall appear in the Prime Lease as if they had been set out in full in this Sublease, and that the rental payments due hereunder shall at all times be in the

same amount as the rental payments due under the Prime Lease. All references in the Prime Lease to "the Agreement" and "this Agreement" shall be deemed to include references to the Trust Agreement.

Section 3. <u>Portions of the Prime Lease Excluded</u>
From This Sublease:

Section 5.03 Section 5.06 Section 6.09

- Section 4. <u>Binding Upon Assigns</u>. Except as otherwise provided herein, the provisions of this Sublease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- Section 5. Notices. All demands, notices and communications hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed to (a) in the case of the Sublessor, 300 Forest Park Boulevard, Knoxville, Tennessee, 37919, Attention: Mr. B. Ray Thompson, Jr., or such other address as may hereafter be furnished to the Sublessee in writing by the Sublessor and (b) in the case of the Sublessee, P. O. Box 10388, Knoxville, Tennessee, 37919, Attention: Mr. B. Ray Thompson, Jr., or such other address as may hereafter be furnished to the Sublessor in writing by the Sublessee. An affidavit by any person representing or acting on behalf of the Sublessor or the Sublessee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.
- Section 6. <u>Effect of Headings</u>. The section headings herein are for convenience only and shall not affect the construction hereof.
- Section 7. <u>Counterparts</u>. This Sublease may be executed in several counterparts each of which shall be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.
- Section 8. <u>Date Executed</u>. This Sublease shall be deemed to have been executed on the date of the acknowledgment thereof by the partner of the Sublessor who signed this Sublease on behalf of the Sublessor.
- Section 9. Governing Law. The provisions of this Sublease, and all the rights and obligations of the parties hereunder, shall be governed by the laws of the Commonwealth of Kentucky, provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303.

*

IN WITNESS WHEREOF, the Sublessor has caused its name to be signed hereto by its duly authorized partner, and the Sublessee has caused its name to be signed hereto by its officer thereunto duly authorized and duly attested, as of the day and year first above written.

ONEIDA & W COMPANY	ESTERN TRANSPORTATION
Ву:	Partner
SHAMROCK O INCORPOR	COAL COMPANY, RATED
By:	
Title:	
COMMONWEALTH OF KENTUCKY SS: COUNTY OF BEFORE ME, the undersigned authority of, 1979, personally a, Partner of Oneida & West of the foregoing instrument, and acknowle executed the same for the purposes and of expressed, in the capacity therein state act and deed of said Company.	appeared stern Transportation nose name is subscribed ledged to me that he consideration therein
IN TESTIMONY WHEREOF, witness my haseal.	and and notarial
Notary Pub	
My commission expire	es:

COMMONWEALTH OF KENTUCKY)) SS:
COUNTY OF)
On this day of, 1979, before me personally appeared, to me personally known who being by me duly sworn says that he is a of Shamrock Coal Company, Incorporated, that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.
IN TESTIMONY WHEREOF, witness my hand and notarial seal.
Notary Public
My commission expires:
This instrument prepared by:
EDWARD B. WEINBERG of Greenebaum Doll & McDonald
3300 First National Tower

Louisville, Kentucky 40202 (502) 589-4200

EXHIBIT_c_

ASSIGNMENT OF SUBLEASE AND GUARANTY

THIS ASSIGNMENT, dated as of ________, 1979, is made by and between ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership (hereinafter called the Company) and CITIZENS FIDELITY BANK & TRUST COMPANY, a Kentucky banking corporation (hereinafter called the Trustee) acting as Trustee under an Equipment Trust Agreement dated as of _______, 1979 between the Trustee and the Company (hereinafter called the Trust Agreement).

WITNESSETH:

- A. Pursuant to the Trust Agreement the Company has agreed to cause to be sold, transferred and delivered to the Trustee certain railroad equipment (hereinafter called the Trust Equipment);
- B. Pursuant to the Trust Agreement title to the Trust Equipment is vested in and is to be retained by the Trustee and the Trust Equipment is leased to the Company and subleased by the Company to Shamrock Coal Company, Incorporated, a Tennessee corporation (hereinafter called the Sublessee) pursuant to a Sublease of Railroad Equipment dated as of the date hereof between the Company and the Sublessee (hereinafter called the Sublease);
- C. The full, faithful and timely performance of Sublessee's obligations under the Sublease are guaranteed pursuant to a Guaranty (hereinafter called the Guaranty) by its parent company Shamrock Resources Corporation (hereinafter called the Guarantor); and
- D. It is desired that the Company grant to the Trustee a security interest in and to the Sublease and the Guaranty;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

1. The Company hereby assigns, transfers and sets over unto the Trustee as security for the payment and performance of all of the Company's obligations under the Trust Agreement (i) all of the Company's right, title and interest as Sublessor in and to the Sublease and the Guaranty, together with all rights, powers, privileges, and other benefits of the Company as Sublessor under the Sublease and the Guaranty in respect of the Trust Equipment (as defined in the Trust Agreement), including but not limited to the Company's right

to receive and collect all payments of rental, liquidated damages, proceeds of sale and other payments now or hereafter to become payable to or receivable by the Company under or pursuant to the provisions of the Sublease and the Guaranty and, in addition, (ii) all the Company's right to receive and collect all per diem mileage or other payments now or hereafter to become payable to the Company in respect of the Trust Equipment, whether under or pursuant to the provisions of the Sublease or otherwise; provided, however, that until the happening of an Event of Default (as such term is defined in the Trust Agreement) the Trustee shall not be entitled to collect or receive any of such rental or other payments or take any other action in respect thereof.

- In addition to, and without in any way limiting, the powers conferred upon the Trustee by the Trust Agreement, the Trustee may upon the happening of an Event of Default (as defined in the Trust Agreement) and not otherwise, in the Trustee's own name or in the name of the Trustee's nominee, or in the name of the Company or as the Company's attorney-in-fact, (i) ask, demand, sue for, collect and receive any and all rental or per diem mileage or other payments to which the Company is or may become entitled in respect of the Trust Equipment and (ii) enforce compliance by the Sublessee under the Sublease and by the Guarantor under the Guaranty with all the terms and provisions thereof and make all waivers and agreements, give all notices, consents and releases, take all action upon the happening of an Event of Default specified in the Sublease, and do any and all other things whatsoever which the Company, as Sublessor is or may become entitled to do under the Sublease and the Guaranty.
- 3. The assignment made by this instrument is made only as security and, therefore, shall not subject the Trustee to, or transfer, or pass or in any way affect or modify, the liability of the Company under any sublease or otherwise, it being understood that, notwithstanding any assignment, all obligations of the Company under any sublease or otherwise shall be and remain enforceable against and only against the Company. The Company hereby irrevocably authorizes the Trustee, at the Company's expense, to file such financing and continuation statements relating to this Assignment, without the Company's signature, as the Trustee at its option may deem appropriate, and appoints the Trustee as the Company's attorney-in-fact to execute any such statements in the Company's name and to perform all other acts which the Trustee deems appropriate to perfect and continue the security interest conferred hereby.
- 4. Upon the full discharge and satisfaction of the Company's obligation under the Trust Agreement, the assignment

made pursuant to this instrument shall terminate and all rights, title and interest of the Trustee as assignee hereunder in and to the Sublease and the Guaranty or any payments in respect of the Trust Equipment shall revert to the Company.

- 5. The Company represents and warrants that it has not heretofore made, and agrees that it will not hereafter make, any amendment of the Sublease, or any other assignment of the Sublease, the Guaranty, or such rental or other payments payable to or receivable by the Company under the Sublease or the Guaranty.
- 6. The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee pursuant to the provisions of this instrument for any rental or per diem mileage or other payments in respect of the Trust Equipment, whether under or pursuant to the provisions of the Sublease or otherwise, or to enforce any provisions of the Sublease or the Guaranty, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever.
- 7. Except as otherwise provided herein, the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 8. All demands, notices and communciations hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed to (a) in the case of the Company, 300 Forest Park Boulevard, Knoxville, Tennessee, 37919, Attention: Mr. B. Ray Thompson, Jr., or such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) in the case of the Trustee, Citizens Plaza, 500 West Jefferson Street, Louisville, Kentucky, 40202, Attention: Mr. C. Howard Capito, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.
- 9. This Agreement may be executed in counterparts each of which shall be deemed to be an original and all of such counterparts shall together constitute but one and the same instrument.
- 10. This Agreement shall be deemed to have been executed on the date of the acknowledgement by the partner of the Company who signed it on behalf of the Company.

11. The provisions of this Agreement and all rights and obligations of the parties hereunder shall be governed by the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first written.

	CITIZENS FIDELITY BANK AND TRUST COMPANY, TRUSTEE
	By:Trust Officer
	ONEIDA & WESTERN TRANSPORTATION COMPANY
	By:
COMMONWEALTH OF KENTUCKY COUNTY OF day of)) SS:) , 1979, before me
personally appeared	, to me ng by me duly sworn says that he zens Fidelity Bank & Trust Company igned on behalf of said bank by Directors and he acknowledged that oing instrument was the free act
My commission expires	:
	Notary Public
	Mocary raptic

COMMONWEALTH OF RENTUCKY	SS:
COUNTY OF	55.
personally appeared of Oneida & Western Transport be the person whose name is instrument, and acknowledge for the purposes and consider	gned, authority, on this day , Partner rtation Company, known to me to subscribed to the foregoing d to me that he executed the same eration therein expressed, in the as the act and deed of said
GIVEN under my hand an day of,	d seal of this office this
My commission expires:	•
	Notary Public

This instrument prepared by:

EDWARD B. WEINBERG of Greenebaum Doll & McDonald 3300 First National Tower Louisville, Kentucky 40202 (502) 589-4200

FORM OF

SUBLESSEE'S CONSENT AND AGREEMENT

The undersigned, SHAMROCK COAL COMPANY, INCORPORATED, a Tennessee corporation, the Sublessee under a Sublease of Railroad Equipment dated as of the date hereof between Oneida & Western Transportation Company, a Tennessee partnership, as Sublessor and the undersigned (hereinafter called the Sublease) referred to in the foregoing Assignment of Sublease and Guaranty (hereinafter called the Assignment) hereby acknowledges receipt of a copy of the Assignment and agrees:

- (1) Subject to the terms and conditions of the Assignment, to pay all rental, casualty payments, liquidated damages, indemnities and other moneys provided for in the Sublease and assigned to the Trustee by the Assignment (which moneys are hereinafter called the Payments), directly to the Trustee;
- (2) Subject to the terms and conditions of the Assignment, that the Trustee shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the undersigned under the Sublease as though the Trustee were named therein as the Sublessor;
- (3) That the Trustee shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Sublease or otherwise;
- (4) That the Sublease shall not, without the prior written consent of the Trustee, be assigned, amended, terminated or modified, or any action be taken or omitted by the undersigned, the taking or omission of which might result in any alteration or impairment of the obligations of the Sublessor under the Sublease which are intended to satisfy the obligations of the Sublessor under the Trust Agreement;
- (5) That the undersigned will (a) execute, deliver and/or furnish all notices, certificates, communications, instruments, agreements, legal opinions and other documents and papers required to be executed, delivered and/or furnished by it (or its counsel) pursuant to the provisions of the Sublease and (b) do all

such acts and execute and deliver all such further assurances required to be done and/or executed and delivered by it pursuant to the provisions thereof.

This Consent may be executed in several counterparts, each of which when so executed shall be deemed an original, and such counterparts together shall constitute one and the same instrument.

This Consent, when accepted by the Trustee by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the Commonwealth of Kentucky and, for all purposes, shall be construed in accordance with the laws of said Commonwealth.

Dated as of _	, 1979.
	SHAMROCK COAL COMPANY, INCORPORATED
	By:
	Title:
STATE OF) SS:
personally appeared ally known who bein	day of, 1979, before me to me person- ng by me duly sworn says that he is a of Shamrock Coal Company, Incorporated, nt was signed on behalf of said Corporation
by authority of its	s Board of Directors and he acknowledged of the foregoing instrument was the free
IN TESTIMONY V	WHEREOF, witness my hand and notarial
	Notary Public
	My commission expires:

ACCEPTED	THIS	 day	of	, 1979.
				CITIZENS FIDELITY BANK AND TRUST COMPANY, TRUSTEE
				By:
				Trust Officer

This instrument prepared by:

EDWARD B. WEINBERG of Greenebaum Doll & McDonald 3300 First National Tower Louisville, Kentucky 40202 (502) 589-4200

SCHEDULE #1

A. EQUIPMENT LEASED:

77 Bathtub-type Gondola Railcars manufactured by Berwick Forge & Fabricating Company

- B. TERM: Unless sooner terminated as set forth in the lease, the term of this lease respecting each item of equipment listed on this schedule expires on June 11, 1989.
- C. RENT: As rent for said equipment, Lessee shall pay Lessor the sum of \$526.00 per month per car, such sum to be subject to adjustment as set forth hereinafter.

Commencing on July 1, 1980, and each July 1 thereafter (the "rental adjustment date"), each of the parties will make a market review to determine the prevailing market rate for rental for any and every item of equipment leased hereby. If the market review indicates that the rental is higher or lower than the prevailing market rate, then an adjustment in the rental shall be made for the following year, effective as of the rental adjustment date. The amount of such adjustment shall be that amount necessary for the rental to equal the prevailing market rate and shall be subject to the approval of the Trustee.

If the parties cannot mutually agree on the prevailing market rate, a qualified disinterested professional recognized in the industry (mutually acceptable to the parties) shall be employed to resolve this disagreement. The conclusion of the consultant shall be accepted by all parties until the next annual review and shall be made effective as of the rental adjustment date for which the adjustment was to be made. Until resolution of the dispute, Lessee shall pay Lessor at the rental rate for the previous year, and adjustment for such payments shall be made retroactive to the rental adjustment date once the dispute has been resolved. The costs of employing independent professional assistance in resolving said disagreement shall be shared one-half (1/2) by Lesser and one-half (1/2) by Lesser.

Unless sooner paid, all said rent shall be payable in any event on or before the expiration or sooner termination of this Lease.

APPROVED AND AGREED TO this llth day of June, 1979, as a schedule to that certain lease dated the 17th day of May, 1979, by and between the parties hereto, and made a part hereof.

ONEIDA & WESTERN TRANSPORTATION

COMPANY

resident

SHAMROCK COAL COMPANY,

INCORPORATED

resident

SCHEDULE #2

A. EQUIPMENT LEASED:

77 Bathtub-type Gondola Railcars manufactured by Berwick Forge & Fabricating Company

- B. TERM: Unless sooner terminated as set forth in the lease, the term of this lease respecting each item of equipment listed on this schedule expires on June 11, 1989.
- C. RENT: As rent for said equipment, Lessee shall pay Lessor the sum of \$526.00 per month per car, such sum to be subject to adjustment as set forth hereinafter.

Commencing on July 1, 1980, and each July 1 thereafter (the "rental adjustment date"), each of the parties will make a market review to determine the prevailing market rate for rental for any and every item of equipment leased hereby. If the market review indicates that the rental is higher or lower than the prevailing market rate, then an adjustment in the rental shall be made for the following year, effective as of the rental adjustment date. The amount of such adjustment shall be that amount necessary for the rental to equal the prevailing market rate and shall be subject to the approval of the Trustee.

If the parties cannot mutually agree on the prevailing market rate, a qualified disinterested professional recognized in the industry (mutually acceptable to the parties) shall be employed to resolve this disagreement. The conclusion of the consultant shall be accepted by all parties until the next annual review and shall be made effective as of the rental adjustment date for which the adjustment was to be made. Until resolution of the dispute, Lessee shall pay Lessor at the rental rate for the previous year, and adjustment for such payments shall be made retroactive to the rental adjustment date once the dispute has been resolved. The costs of employing independent professional assistance in resolving said disagreement shall be shared one-half (1/2) by Lessor and one-half (1/2) by Lessee.

Unless sooner paid, all said rent shall be payable in any event on or before the expiration or sooner termination of this Lease.

APPROVED AND AGREED TO this 11th day of June, 1979, as a schedule to that certain lease dated the 17th day of May, 1979, by and between the parties hereto, and made a part hereof.

ONEIDA & WESTERN TRANSPORTATION

COMPANY

President

SHAMROCK COAL COMPANY,

INCORPORATED

President

Exhibit C

ASSIGNMENT OF SUBLEASE AND GUARANTY

THIS ASSIGNMENT, dated as of UVY 27, 1979, is made by and between ONEIDA & WESTERN TRANSPORTATION COMPANY, a Tennessee partnership (hereinafter called the Company) and CITIZENS FIDELITY BANK & TRUST COMPANY, a Kentucky banking corporation (hereinafter called the Trustee) acting as Trustee under an Equipment Trust Agreement dated as of July 27, 1979 between the Trustee and the Company (hereinafter called the Trust Agreement).

WITNESSETH:

- A. Pursuant to the Trust Agreement the Company has agreed to cause to be sold, transferred and delivered to the Trustee certain railroad equipment (hereinafter called the Trust Equipment);
- B. Pursuant to the Trust Agreement title to the Trust Equipment is vested in and is to be retained by the Trustee and the Trust Equipment is leased to the Company and subleased by the Company to Shamrock Coal Company, Incorporated, a Tennessee corporation (hereinafter called the Sublessee) pursuant to a Sublease of Railroad Equipment dated as of the date hereof between the Company and the Sublessee (hereinafter called the Sublease);
- C. The full, faithful and timely performance of Sublessee's obligations under the Sublease are guaranteed pursuant to a Guaranty (hereinafter called the Guaranty) by its parent company Shamrock Resources Corporation (hereinafter called the Guarantor); and
- D. It is desired that the Company grant to the Trustee a security interest in and to the Sublease and the Guaranty;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

l. The Company hereby assigns, transfers and sets over unto the Trustee as security for the payment and performance of all of the Company's obligations under the Trust Agreement (i) all of the Company's right, title and interest as Sublessor in and to the Sublease and the Guaranty, together with all rights, powers, privileges, and other benefits of the Company as Sublessor under the Sublease and the Guaranty in respect of the Trust Equipment (as defined in the Trust Agreement), including but not limited to the Company's right

to receive and collect all payments of rental, liquidated damages, proceeds of sale and other payments now or hereafter to become payable to or receivable by the Company under or pursuant to the provisions of the Sublease and the Guaranty and, in addition, (ii) all the Company's right to receive and collect all per diem mileage or other payments now or hereafter to become payable to the Company in respect of the Trust Equipment, whether under or pursuant to the provisions of the Sublease or otherwise; provided, however, that until the happening of an Event of Default (as such term is defined in the Trust Agreement) the Trustee shall not be entitled to collect or receive any of such rental or other payments or take any other action in respect thereof.

- In addition to, and without in any way limiting, the powers conferred upon the Trustee by the Trust Agreement, the Trustee may upon the happening of an Event of Default (as defined in the Trust Agreement) and not otherwise, in the Trustee's own name or in the name of the Trustee's nominee, or in the name of the Company or as the Company's attorney-in-fact, (i) ask, demand, sue for, collect and receive any and all rental or per diem mileage or other payments to which the Company is or may become entitled in respect of the Trust Equipment and (ii) enforce compliance by the Sublessee under the Sublease and by the Guarantor under the Guaranty with all the terms and provisions thereof and make all waivers and agreements, give all notices, consents and releases, take all action upon the happening of an Event of Default specified in the Sublease, and do any and all other things whatsoever which the Company, as Sublessor is or may become entitled to do under the Sublease and the Guaranty.
- The assignment made by this instrument is made only as security and, therefore, shall not subject the Trustee to, or transfer, or pass or in any way affect or modify, the liability of the Company under any sublease or otherwise, it being understood that, notwithstanding any assignment, all obligations of the Company under any sublease or otherwise shall be and remain enforceable against and only against the Company. The Company hereby irrevocably authorizes the Trustee, at the Company's expense, to file such financing and continuation statements relating to this Assignment, without the Company's signature, as the Trustee at its option may deem appropriate, and appoints the Trustee as the Company's attorney-in-fact to execute any such statements in the Company's name and to perform all other acts which the Trustee deems appropriate to perfect and continue the security interest conferred hereby.
- 4. Upon the full discharge and satisfaction of the Company's obligation under the Trust Agreement, the assignment

made pursuant to this instrument shall terminate and all rights, title and interest of the Trustee as assignee hereunder in and to the Sublease and the Guaranty or any payments in respect of the Trust Equipment shall revert to the Company.

- 5. The Company represents and warrants that it has not heretofore made, and agrees that it will not hereafter make, any amendment of the Sublease, or any other assignment of the Sublease, the Guaranty, or such rental or other payments payable to or receivable by the Company under the Sublease or the Guaranty.
- 6. The Company covenants and agrees with the Trustee that in any suit, proceeding or action brought by the Trustee pursuant to the provisions of this instrument for any rental or per diem mileage or other payments in respect of the Trust Equipment, whether under or pursuant to the provisions of the Sublease or otherwise, or to enforce any provisions of the Sublease or the Guaranty, the Company will save, indemnify and keep the Trustee harmless from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever.
- 7. Except as otherwise provided herein, the provisions hereof shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 8. All demands, notices and communciations hereunder shall be in writing and shall be deemed to have been duly given if personally delivered at or mailed to (a) in the case of the Company, 300 Forest Park Boulevard, Knoxville, Tennessee, 37919, Attention: Mr. B. Ray Thompson, Jr., or such other address as may hereafter be furnished to the Trustee in writing by the Company, and (b) in the case of the Trustee, Citizens Plaza, 500 West Jefferson Street, Louisville, Kentucky, 40202, Attention: Mr. C. Howard Capito, or such other address as may hereafter be furnished to the Company in writing by the Trustee. An affidavit by any person representing or acting on behalf of the Company or the Trustee, as to such mailing, having the registry receipt attached, shall be conclusive evidence of the giving of such demand, notice or communication.
- 9. This Agreement may be executed in counterparts each of which shall be deemed to be an original and all of such counterparts shall together constitute but one and the same instrument.
- 10. This Agreement shall be deemed to have been executed on the date of the acknowledgement by the partner of the Company who signed it on behalf of the Company.

The provisions of this Agreement and all rights and obligations of the parties hereunder shall be governed by the laws of the Commonwealth of Kentucky.

*

್ರ

3

)

3

COMMONWEALTH OF KENTUCKY

COUNTY OF OLLLESON

and deed of said bank.

IN WITNESS WHEREOF the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized as of the day and year first written.

CITIZENS FIDELITY BANK AND TRUST COMPANY, TRUSTEE ONEIDA & WESTERN TRANSPORTATION COMPANY On this 27 day of _______, 1979, before me personally appeared _______, to me personally known; who being by me duly sworn says that he is a Trust Officer of Citizens Fidelity Bank & Trust Company, that said instrument was signed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act My commission expires: 12/24/80

COMMONWEALTH OF KENTUCKY)) SS:
COUNTY OF GLYCUSON) SS:
personally appeared Before Transportation Company, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said Company.
GIVEN under my hand and seal of this office this 27 de day of 1979. My commission expires: \(\begin{align*} \
Buckles Laxee Notary Public

This instrument prepared by:

EDWARD B. WEINBERG
of Greenebaum Doll & McDonald
3300 First National Tower
Louisville, Kentucky 40202
(502) 589-4200

3

1

")

EXHIBIT D

GUARANTY OF SUBLEASE

July 27 , 1979

FOR VALUE RECEIVED, the undersigned, SHAMROCK RESOURCES CORPORATION (hereinafter called Guarantor), a corporation duly incorporated under the laws of the State of Tennessee, and having its office at P. O. Box 10388, Knoxville, Tennessee, 37919, for the purpose of inducing the Sublessor to execute the foregoing Sublease, unconditionally and absolutely guarantees the full, faithful and timely performance by Sublessee of all undertakings, covenants, duties and obligations of any kind assumed by or imposed upon Sublessee by the Sublease, as now written or as hereafter amended, and the prompt and full payment by Sublessee as and when due of all rent, obligations and liabilities of any kind for which Sublessee is now or may hereafter become liable or obligated to Sublessor under, by virtue of, or in relation to, the Sublease, in any manner, either primarily or secondarily, absolutely or contingently, directly or indirectly. No release of Guarantor from its obligations hereunder shall be effective unless in writing and executed by the Sublessee, the Sublessor and the Trustee (as defined in the Sublease).

Guarantor hereby waives any and all notices, acts, omissions and things, the want, making, giving, performance, nonperformance, existence or non-existence of which would or might affect, alter, impair, release, diminish or extinguish Guarantor's liability hereunder or any right or remedy of Sublessor hereunder.

This Agreement and the construction hereof shall be governed by the laws of the Commonwealth of Kentucky.

•

1

This Guaranty shall be binding upon Guarantor and its successors and assigns, and shall inure to the benefit of Sublessor and its successors and assigns.

Dated as of the 27^{11} day of 37^{11} , 1979.

SHAMROCK RESOURCES CORPORATION

By: S. Kayman psoup

COUNTY OF

On this 37 day of poly 1979, before me personally appeared b. Flan Momasen of to me personally known who being by me duly sworn says that he is a vice funder of Shamrock Resources Corporation, that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

IN TESTIMONY WHEREOF, witness my hand and notarial seal.

My commission expires: October 1982.

This instrument prepared by:

EDWARD B. WEINBERG of Greenebaum Doll & McDonald 3300 First National Tower Louisville, Kentucky 40202 (502) 589-4200

)